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97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-384

FUTURES TRADING ACT OF 1982

REPORT

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

TO ACCOMPANY

S. 2109

MAY 6 (legislative day, APRIL 13), 1982.—Ordered to be printed

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MAY 6 (legislative day, APRIL 13), 1982.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 2109]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 2109) to extend the Commodity Exchange Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

SHORT EXPLANATION

S. 2109, as amended by the Committee, extends for 2 years the authorization for appropriations for the Commodity Futures Trading Commission. The bill also makes several changes in the Commodity Exchange Act that will both strengthen and focus the Commission's regulatory efforts and reduce regulatory burdens on certain segments of the commodities industry.

COMMITTEE AMENDMENT

The Committee amendment strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute.

SUMMARY OF MAJOR PROVISIONS

The major provisions of S. 2109, as amended by the Committee, are as follows:

Reauthorization.—The bill provides authorization of appropriations to carry out the Commodity Exchange Act (the "Act") for an additional 2 years (through September 30, 1984). (Sec. 26(1).)

CFTC/SEC JURISDICTIONAL AGREEMENT

(a) *Future and options contracts—general.*—The bill continues the exclusive jurisdiction of the Commodity Futures Trading Commission (the "Commission") over commodity futures contracts (including options on futures) except as provided below. The bill provides that the Commission will have no jurisdiction to designate a contract market to trade options on securities including any group or index thereon, or interest therein. The Commission's exclusive jurisdiction over futures and options on futures on exempted securities (other than municipal securities) is continue. (Secs. 3 (a) and (b).)

The bill prohibits futures (or options on futures) on individual corporate bonds or securities, or municipal securities. No such futures are presently traded. (Secs. 3 (a) and (b).)

The bill also specifically provides that nothing in the Act applies to options on foreign currencies traded on a national securities exchange. The effect of this provision is to permit trading of options on foreign currencies on both commodity exchanges and stock exchanges. (Sec. 3(c).)

(b) *Stock index futures.*—The bill continues the Commission's exclusive jurisdiction over futures contracts (and options on such contracts) on a group or index of securities (or any interest therein or based on the value thereof). It sets forth the following conditions which the Commission must find that these contracts meet before a board of trade will be designated to trade such contracts: (i) settlement of such contracts must be made in cash or by means other than the delivery, transfer, or receipt of a security. Exempted securities (other than municipal securities), however, may be delivered, transferred, or received in settlement of these futures contracts; (ii) the contract must not be readily susceptible to price manipulation; and (iii) the stock index underlying the futures contract must be based on a broad group of securities. The bill requires the Commission to give the public an opportunity to comment on whether the standards enumerated above are met by the proposed contract under consideration. The Commission is also to consult with the Securities and Exchange Commission prior to approving such a contract application. If the SEC objects to the designation of a particular contract, the bill provides that the SEC may seek an oral hearing before the Commission and appeal any adverse decision to the courts. (Sec. 3(b).)

(c) *Commodity pools.*—The bill makes explicit that the Act does not affect the applicability of the pertinent provisions of the Federal securities laws of 1933 and 1934 governing securities issued to the public by commodity pools. (Sec. 3(d).)

(d) *Information sharing with futures and securities self-regulatory organizations.*—The bill broadens section 8a(6) of the Act to authorize disclosure of any information necessary or appropriate to effectuate the purposes of the Act to a registered futures association or to a self-regulatory organization recognized under Federal securities laws, as well as to contract markets. The bill permits such information to be disclosed by the contract markets or other self-regulatory organizations only in a self-regulatory action or proceeding. (Sec. 3(e).)

Agricultural options.—The bill repeals section 4c(a)(B) which bans the trading of options on agricultural commodities (that is, commod-

ities specifically enumerated in section 2(a)(1) of the Act prior to 1974) and gives the Commission the authority to permit trading of such options under the same conditions as apply to options on other commodities. (Sec. 8.)

Role of the States in commodity regulation.—Notwithstanding the Act's exclusive jurisdiction and preemption, the bill permits any Federal or State law to be applied (i) to activities and persons who engage in commodity transactions outside the Act's regulatory structure, such as off-exchange futures or other commodity investments or activities, and (ii) to persons who are required to be registered or designated by the Commission but who do not obtain such registration or designation. This provision does not apply to trading on or subject to the rules of contract markets, authorized commodity options, and regulated leverage transactions, which would remain subject to exclusive Commission regulation. In addition, commodity transactions conducted on or subject to the rules of a foreign board of trade or market would not be subject to State jurisdiction, except as otherwise specified by the Commission. (Sec. 26(2).)

Definition of "commodity trading advisor".—The bill excludes from the definition of "commodity trading advisor" any person who gives advice or issues reports or analyses with respect to only cash commodities or their value. However, the Commission could include persons within or exclude them from the definition of "commodity trading advisor" when necessary to effectuate the provisions of the Act.

The bill also extends the present exclusions from the definition of "commodity trading advisor" to the electronic media and to trustees of certain pension plans subject to the Employee Retirement Income Security Act of 1974 if the furnishing of trading advice by such persons is solely incidental to the conduct of their business or profession. (Sec. 2(3).)

Sale of contracts executed on foreign exchanges.—The bill expressly authorizes the Commission to promulgate regulations relating to fraud, minimum financial standards, disclosure of risk and reporting requirements, keeping of books and records, safeguarding of customer funds, and registration of any person located in the United States who is engaged in the offer and sale of foreign futures contracts.

The Commission could adopt different rules for different markets but would be precluded from adopting rules that govern foreign exchanges or clearinghouses or require approval of contracts, rules, or actions of foreign exchanges, markets, and clearinghouses. (Sec. 6.)

Legislative findings on options and speculation.—The bill adds a finding that transactions involving commodity options have an impact on the national economy and interstate commerce and that the regulation of options transactions is imperative for the protection of such commerce and the national public interest.

The bill also deletes certain language used to describe speculation. (Sec. 5.)

Speculative limits.—The bill authorizes the Commission to establish speculative limits by rulemaking, as well as by order, after notice and hearing. It expressly permits contract markets and other licensed exchanges to set speculative limits for futures and option transactions. If the Commission has established speculative limits, exchange established limits could not be higher than those set by the Commission,

unless approved by the Commission. The bill makes a violation of exchange established speculative limits a violation of the Act, if the exchange established limits have been approved by the Commission. However, the criminal penalties under section 9(c) of the Act would not apply to violations of the exchange established speculative limits unless the violation was in furtherance of an attempt to manipulate, corner, or squeeze a market. (Sec. 7.)

Large trader requirements.—The bill amends existing law to clarify that persons whose trades or positions in any cash commodity or futures contract equal or exceed levels set by the Commission must keep books and records revealing the nature and extent of these trades or positions and allow inspection of these books and records. This statutory requirement applies even if the Commission eliminates routine reporting requirements for large traders. (Sec. 13.)

REGISTRATION

(a) *Associated persons of commodity pool operators and commodity trading advisors.*—The bill requires registration of principals, employees, and consultants of commodity pool operators and commodity trading advisors as associated persons of such entities when these persons are involved in solicitation of pool participations or discretionary accounts or the supervision of persons engaged in such solicitation. (Secs. 14(3) and (4).)

(b) *Term of Registration.*—The bill authorizes the Commission to prescribe the effective period of the registration of associated persons of futures commission merchants, introducing brokers, commodity pool operators, and commodity trading advisors. (Sec. 14(5).)

(c) *Introducing brokers and their associated persons.*—The bill provides for the registration of "agents of futures commission merchants" as "introducing brokers" and their employees as asociated psersons of introducing brokers when the employees are involved in solicitation or the supervision of persons engaged in solicitation. Generally, the term "introducing broker" includes persons who solicit or accept futures orders but who do not handle customer funds. The bill provides for the registration and regulation of introducing brokers modeled after that of futures commission merchants and for introducing broker membership in and regulation by a registered futures association. (Secs. 2(2), 7(5), 9, 10, 11, 14, 17 and 23.)

(d) *Testing.*—The bill extends the Commission's authority to require proficiency or fitness testing to all persons who are required to register with the Commission. (Sec. 17.)

(e) *Delegation of registration functions.*—The bill provides for the performance by any person of any portion of the Commission's registration functions under the Act. The bill deletes current section 4k(3) of the Act in light of this change. (Secs. 23(7) and 14(4).)

(f) *Statutory disqualification from registration.*—The bill establishes statutory disqualifications and deletes sections 4n(5) and (6) of the Act as superfluous. (Secs. 23 and 15.)

The bill also authorizes the Commission to deny, condition, suspend, or restrict registration without a hearing or revoke registration after a hearing if any of the disqualifications in the eight enumerated provisions are present, such as suspension or revocation of prior registra-

tion, a court order barring specified conduct involving securities or commodities, or a recent conviction for such felonies as bribery or bankruptcy fraud. (Sec. 23(2).)

The bill further authorizes the Commission to deny, condition, suspend, revoke, or restrict registration after opportunity for hearing if any of the disqualifications in the 14 other enumerated provisions are present, such as a previous violation of the Act, Federal securities laws, or similar State or foreign law, conviction of certain commodity or securities related offenses, and failure to reasonably supervise a person subject to one's supervision. (Secs. 23(4) and (5).)

(g) *Conditional registration.*—The bill authorizes the Commission to register conditionally or to place restrictions on registration. (Secs. 23(2), (4), and (5).)

(h) *Responsibility for associated persons.*—The bill prohibits a registrant from permitting a person to be an associated person of the registrant if the registrant knows or should have known that the person is subject to a statutory disqualification, unless the Commission has been notified of the disqualification and has registered or temporarily licensed the person. The bill also establishes that registration may be denied, conditioned, suspended, revoked, or restricted, after opportunity for hearing, on the ground that the applicant or registrant has associated with him a person who is subject to a statutory disqualification, unless the applicant or registrant has notified the Commission of the disqualification and the Commission has determined that such person should be registered. (Secs. 14(6) and 23(4).)

(i) *Fingerprinting.*—The bill specifically authorizes a registered futures association to collect the fingerprints of its members, submit those fingerprints to the Federal Bureau of Investigation, and receive the results of the FBI analysis. (Sec. 30(1).)

(j) *Temporary license.*—The bill authorizes the Commission to grant a 6-month provisional license to applicants for registration in order to permit such applicants to begin work or to conduct business prior to completion of the fitness checks required for registration. (Sec. 23(1).)

(k) *State notification of registration.*—The bill provides that the Commission will make available information on Commission registrants upon specific request by a State. The bill also requires the Commission to release such information without request when the Commission has determined that the information is appropriate for use by the State agency. (Sec. 22(5).)

CONTRACT MARKET RULES

(a) *Enforcement of rules by contract markets.*—The bill requires contract markets to enforce all bylaws, rules, regulations, and resolutions that must be enforced pursuant to any Commission rule, regulation, or order, thereby codifying Commission regulation 1.53 which requires enforcement of bylaws, rules, regulations, and resolutions in effect as of July 18, 1975, that have not been disapproved by the Commission. Contract markets must continue to enforce rules approved by the Commission under section 5a(12) and must also enforce rules that have become effective under this amendment to that section. (Sec. 18(1).)

(b) *Approval of contract market rules.*—The bill requires the submission of contract market rules that relate to contract terms and conditions for prior Commission approval. The bill also requires submission of all other proposed rules (except rules related to the setting of levels of margins) but permits their implementation 10 days after submission to the Commission, unless the Commission itself determines that the rule merits review or the contract market requests review.

The bill further provides that, if the Commission has not approved a proposed rule or instituted disapproval proceedings within 180 days after the filing of the proposed rule, or if disapproval proceedings have been instituted within 180 days but have not been completed within 1 year of submission, a contract market may put the rule into effect.

In addition, the bill provides for publication in the *Federal Register* of a notice of economically significant rule proposals in lieu of the proposal's full text.

The bill also continues the Commission's authority to disapprove any rule before or after implementation. It requires the Commission, in disapproving a rule or proposed rule, to specify the sections of the Act or regulations that the rule violates or would violate.

The bill eliminates the separate category of operational and administrative rules and continues the contract markets' authority to take emergency action and to set levels of margin. (Sec. 18(3).)

(c) *Registered futures association.*—The bill requires a registered futures association to submit proposed rules or changes in such rules to the Commission for review. Rules may be put into effect 10 days after receipt by the Commission, unless the Commission decides to review the rule or the association requests review. The Commission is to approve rules within 30 days of receipt unless it notifies the association that its review cannot be completed within the 30-day period. The Commission is to approve rules if consistent with section 17 and not in violation of the Act or Commission regulations, and disapprove rules, after opportunity for hearing, if the rules are inconsistent with section 17 or violate the Act or Commission regulations. (Sec. 30(4).)

(d) *Contract market designation.*—The bill specifies that the Commission has 1 year to approve new contract applications or to deny the application and specify the grounds for denial. The running of the 1-year period would be stayed from the time the Commission notifies the board of trade that its application is materially incomplete until such time as a completed application is submitted. (Sec. 19).

DISCLOSURE OF CONFIDENTIAL INFORMATION

(a) *Investigative information.*—The bill extends the prohibition on publication of certain information to include information resulting from the Commission's investigation of any person. (Sec. 22(1).)

(b) *Proprietary information.*—The bill exempts from disclosure confidential information and proprietary information that would not customarily be disclosed to the public, except that the Commission may disclose such information if disclosure is necessary to obtain public comment. (Sec. 22(1).)

(c) *Receivership or bankruptcy proceedings.*—The bill extends the scope of the authority for disclosure of confidential information to

permit disclosure in connection with certain judicial receivership or bankruptcy proceedings. (Sec. 22(2).)

(d) *Information release under subpoena.*—The bill requires the Commission, upon receipt of a subpoena or summons, to mail a copy of the subpoena or summons to the person whose records or documents are being requested, and to wait 14 days after the mailing of the subpoena or summons before disclosing the records or documents. (Sec. 22(5).)

(e) *Information sharing with other agencies and governments.*—The bill clarifies that information may be disclosed to any appropriate Federal department or agency, including independent agencies. The bill also extends existing authority under section 8(e) of the Act to permit the Commission to provide State and foreign officials with information so long as such information is used solely for *bona fide* law enforcement purposes. (Sec. 22(3).)

ENFORCEMENT

(a) *Ex parte orders.*—The bill alters the current prohibition on obtaining *ex parte* orders to restrain or enjoin violations of the Act to permit the Commission to obtain *ex parte* orders from courts of competent jurisdiction for purposes of preventing the destruction of evidence or the dissipation of assets or obtaining access to books and records. (Sec. 21.)

(b) *Embezzlement.*—The bill expands section 9(a) of the Act to make it a felony for any person registered or required to be registered under the Act, or any employee or agent thereof, to embezzle or steal customers' assets. Currently, this provision applies only to futures commission merchants and their employees or agents. (Sec. 25(1).)

(c) *Aiding and abetting.*—The bill amends section 13(a) of the Act to delete the reference to administrative proceedings so that aiders and abettors may be held liable as principals for violation of the Act in judicial as well as administrative proceedings brought pursuant to the Act. (Sec. 27(1).)

(d) *Controlling person.*—The bill adds a new section 13(b) to the Act which provides that a person who directly or indirectly controls another person or entity that violates the Act or its regulations may be held liable for such violation in any action brought by the Commission to the same extent as the controlled person if the controlling person did not act in good faith and directly or indirectly induced the act constituting the violation. In establishing liability under this section, the Commission would bear the burden of showing that the controlling person did not act in good faith and directly or indirectly induced the act constituting the violation. (Sec. 27(3).)

(e) *Fraud and misrepresentation.*—The bill extends the antifraud provisions of section 40 to associated persons of commodity trading advisors and of commodity pool operators. (Sec. 16.)

The bill also extends the prohibition against misrepresentation of registration or contract market membership status to any registrant, including the representative or agent of any registrant. (Sec. 12).

(f) *Appellate venue.*—The bill clarifies the law governing appellate venue for review of Commission orders by providing that, in the case of an order denying registration, the petitioner may obtain

review in the United States court of appeals for the circuit in which the petitioner's principal place of business (as listed on its application for registration) is located. (Sec. 20(2).)

REMEDIES

(a) *Arbitration.*—The bill eliminates the current $15,000 ceiling on claims for which arbitration must be provided through contract markets and registered futures associations; retains the existing right of customers to elect arbitration; eliminates the provision providing for no compulsory payment except as agreed to between the parties; and broadens the term "customer" to include futures commission merchants or floor brokers who are not members of the contract market or registered futures association which conducts the arbitration proceeding. (Secs. 18(2) and 30(2).)

(b) *Reparations.*—The bill limits reparations claims to cases where the respondent is registered with the Commission; eliminates procedures required by statute, including the requirement that claims over $5,000 be heard by an Administrative Law Judge; authorizes the Commission to issue rules governing the administration of the reparations program; and extends the automatic bar to trading, which is put into effect when a final reparations award is not paid, to any party who does not pay such an award. This bar to trading previously applied only to registrants. (Sec. 28.)

Judicial review of emergency action.—The bill authorizes judicial review of Commission emergency action only in United States courts of appeal. Such review would be based only upon the information available to the Commission at the time the emergency determination is made, and the reviewing court could not enter a stay of the action or an order of mandamus unless, after notice and hearing before a panel of the Court, it determines that the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. (Sec. 24.)

User fee study and report.—The bill provides for a study by the Commission of the effect of imposing a transaction fee to offset the cost of regulating transactions under the jurisdiction of the Commission. The study would include consideration of the effect of such a fee on market liquidity, determination of the portions of the Commission budget expended for public and for private benefit, and consideration of the incidence of the fee, including the impact on producers, processors, manufacturers, and other hedgers. A report detailing the findings of the study is to be submitted to the House Agriculture Committee and the Senate Agriculture, Nutrition, and Forestry Committee by January 1, 1984. (Sec. 31.)

CONFLICTS OF INTEREST

(a) *"Revolving door" provision.*—The bill repeals section 2(a)(7)(B) of the Act which generally prohibits any former Commissioner or employee classified as GS–16 or higher in a position excepted from the competitive service by reason of being of a confidential or policymaking character from making any appearance before or communication to the Commission for a period of 1 year after that individual leaves

the Commission. [Subsequently enacted government-wide ethics legislation, the Ethics in Government Act of 1978 (18 U.S.C. § 207(c)), makes comparable restrictions applicable to former Commissioners and most Senior Executive Service employees.] (Sec. 4.)

Insider trading.—The bill extends to leverage transactions the provisions in section 9(d) of the Act that prohibit Commission members and employees from engaging in commodity futures or options transactions or investment transactions in actual commodities. The bill also extends to leverage transactions the provisions in section 9(e) that prohibit Commission members and employees from imparting nonpublic information to assist another in transactions in commodity futures, options, and physical commodities. The bill adds to those existing exempted transactions in section 9(d) transactions undertaken by independent trustees of trusts established by Commission members or employees for purposes of engaging in hedging transactions in connection with allowable farming or ranching operations and transactions involving the leasing of oil, gas, or mineral rights owned by a Commissioner or employee. The bill also permits Commission members and employees to invest in Government securities and other financial instruments if the instrument is not regulated by the Commission and no nonpublic information is used in making the investment decision. (Secs. 25(2) and (3).)

Background

Futures trading is a basic adjunct of the production and marketing of agricultural and other commodities, and a speculative activity engaged in by a growing number of Americans. The economic purpose of such trading and its effect upon the cash pricing system of those commodities that are traded as futures are often misunderstood by those both within and without industry. Often equally misunderstood is the role of governmental regulation of the industry.

I.

The commodity exchanges are old institutions. The present day exchanges, where futures are traded, trace their lineage to medieval trade fairs that sprang into existence in the Twelfth Century on the European Continent. At these fairs, trading took place at preannounced markets at fixed times and places. Early trading fairs contemplated immediate delivery of the commodity traded, but gradually the practice of contracting for merchandise for subsequent delivery with standards of quality established by samples gained favor. The practices of such trading were subsequently codified into the Law Merchant.

Following the example of the Continent, producers and merchants in America formed the first centralized commodity markets in the late 1700's, for trade in eggs, butter, vegetables, and grain. By and large, the commodity exchanges in the United States were largely cash markets for "spot" delivery.

As farmers brought grain and livestock to regional markets at essentially the same time each year, they often found that the supply of meats and grain far exceeded the immediate, short-term needs of packers and millers. These processors in turn, seeing more than adequate supplies at particular times, would bid at the lowest possible price.

Often, the short-term demand could not absorb the glut of commodities at any price, and goods were dumped in the street for lack of buyers. The problem was often aggravated by lack of adequate storage facilities and road and water transportation. Through much of the year, snow and rain made the dirt roads from country farmlands to the city impassable, and once the commodities reached the exchange area, there was a continual problem of inadeqaute storage. Standards of quality and weight were often nonexistent and complicated a marketing system that also was the victim of inadequate and underdeveloped harbor facilities.

Yet several months after the fall harvest and marketing of grain and livestock, prices would soar and people often went hungry. Businesses faced bankruptcy through lack of raw materials and inability to meet the financing needs of their businesses. The rural population was unable to pay for needed manufactured products from the city—tools, building materials, and textiles.

This situation led to the emergence in the United States of forward contracting, following its development in England. Forward contracting solved the basic problems of availability and demand, but did nothing to control the financial risk of loss that could occur with rapidly changing prices resulting from crop failures, losses of ships, inadequate storage and transportation, and the recurring economic panics of 19th Century America.

II.

The system of agricultural futures trading developed in the United States in the 1850–1900 period in response to the rapidly increasing economic need for centralized pricing and large-scale risk bearing in agricultural marketing.

It came about first at Chicago in the mainstream of surplus grain marketing, and then at New York in the distribution and export of cotton. From the 1870's onward, the futures markets at these and other centers, by attracting many traders and increasing competition, began to provide the "common language of price" and the standard commercial practices needed for the greatly increased commerce in grains and cotton.

The large trade in futures provided a competitive system of almost continuous information for price basing and guidance in marketing and distribution. Beginning in the early period, prices from futures trading did more than disseminate a central-market price for immediate needs, such as a large cash market can provide. Futures trading projects demand and price into the future, and provides a means of appraising supply-and-demand conditions, and dealing with price risks, over time and distance. Trading in futures provides not only the market of today, but of months ahead, and affords guidance to buyers and sellers of commodities in planning ahead, and in financing and marketing commodities from one season to another.

The emerging futures trading system of the 1870's and 1880's also began to provide protection for the increased capital needed for large scale marketing of grains and cotton. More precisely, by adapting to large-scale marketing needs the principle of the hedging transaction—sales or purchases in futures against inventories or commitments in

the cash commodity—price risks were so reduced or offset as to enable many merchants with limited capital to handle larger commodity requirements. Equally important, the competitive effect of many speculative buyers and sellers in the market, and the effect of hedging in maintaining effective competition among commodity handlers, began to reduce gradually the merchandising price margins involved in moving large quantities of grains and cotton.

Little, if any, of this was apparent to farmers in the early period when the frequent picture of commodity exchanges was one of unbridled speculation, recurrent market manipulations, and spectacular price fluctuations. Indeed, it was a serious question with many whether the economic services of the system in the 1870's and 1880's were not outweighed by speculative excesses and abuses of the system.

III.

The irresponsible trading and lack of effective market regulation in the early period stirred farm resentment and opposition to futures trading that still exist to a limited extent. The abuses of futures trading in this early period resulted in repeated efforts of various State legislatures, from the late 1860's onward, to abolish futures trading. In 1844, the first bill to prohibit futures trading was introduced in Congress—followed by a long succession of similar bills over the next 50 years. Matters came to a crisis in 1892–93 when both the House and Senate passed bills levying a prohibitive tax on futures contracts in grain, cotton, and certain other commodities. This legislation failed only narrowly when two-thirds approval was needed on a House motion to suspend its rules to clear the way for acceptance of minor changes in the Senate bill.

In the period from 1895 to 1920, the agitation to abolish futures trading gradually gave way to efforts directed toward regulation. This change was associated with the rising trend of farm prices in the United States and generally improved farm conditions in the 1895–1920 period. The growth during this period of effective farmers' organizations and cooperative marketing associations, and work by the U.S. Department of Agriculture for better grading methods and more uniform standards in grain and cotton, began to lay the groundwork for more stable and dependable pricing in the futures markets.

The demands for Federal regulation of futures were insistent, however, and although quieted temporarily by the restrictions on futures trading imposed by World War I, were sharply reawakened in 1920–21 by speculative excesses on the grain exchanges during the post-war period of falling prices and farm depression. This resulted in the Futures Trading Act of 1921, which was based on the taxing power under the Federal Constitution. On this basis, the regulatory legislation was declared unconstitutional by the Supreme Court, but was reintroduced in 1922 as the Grain Futures Act, based on the interstate commerce clause of the Constitution, and on this basis was declared constitutional.

IV.

The Grain Futures Act of 1922 was designed mainly to enable the Government to deal with the exchanges themselves, rather than with individual traders. To conduct futures trading lawfully, the grain ex-

changes were required to be federally licensed or "designated" as "contract markets." A condition of such designation was that the exchanges themselves would take major responsibility for the prevention of price manipulation by their members. If they failed to do so, the only recourse was the suspension or revocation of their designations, and this was scarcely advisable. Although the legislation did provide for legal action by the Government against price manipulation, some of the legal actions undertaken against alleged manipulators proved ineffectual because of limitations and loopholes in the early law. The 1922 Act did, however, provide the means for effective and continuous fact-finding and investigations by the U.S. Department of Agriculture, which pointed to sources and patterns of excessive speculation and price manipulation and showed that the limited regulatory powers authorized were inadequate in dealing with these and other market abuses. Beginning in 1927, the Department began submitting recommendations to Congress for additional legislation, and these eventually resulted, after extensive congressional hearings in the 1934–36 period, in the amended legislation of the latter year.

Under these amendments of 1936, the legislation was renamed the Commodity Exchange Act and the regulatory coverage was extended to cotton and other specified commodities as well as grains. Broad additional authority was granted to deal with market abuses by traders generally as well as exchange members, to prosecute price manipulation as a criminal offense, to curb excessive speculation by the large market operator, and to extend regulation to the previously uncovered field of commodity brokerage in order to suppress cheating, fraud, and fictitious transactions in futures, which were seriously impairing the services of the market.

Between 1936 and 1968, there were several minor amendments to the Commodity Exchange Act, including amendments bringing additional commodities under regulation. In 1968, Congress made several significant changes in the Act. It required that futures commission merchants meet specified minimum financial standards, increased the penalties for certain law violations such as manipulation and embezzlement, authorized the issuance of cease-and-desist orders, required contract markets to enforce their trading rules and contract terms, and brought under regulation livestock, livestock products, and frozen concentrated orange juice.

V.

After the enactment of the 1968 amendments to the Commodity Exchange Act, there was a major shift to a more market-oriented economy. As a result, futures markets began to play an increasingly important role in the pricing and marketing of the Nation's commodities. As the economy experienced sharp rises in the prices of many commodities, increased volatility of prices, and an increased number of complex price-making forces in the markets, the growing importance of futures markets was reflected in a record volume of trading and substantial increases in open contracts.

In former years, when the Federal Government had large stockpiles of the major commodities, the Government stocks had a stabilizing effect upon price. There was little fear of sharp increases in prices, for when such increases began, Government stocks were freed,

thus reversing or limiting the price movement. As long as this was true, there was less need for hedging in the futures markets. A merchandiser or processor could make forward fixed-price sales commitments without too much fear of a sharp rise in prices before he obtained the commodities to fulfill his commitments. By 1974, this was no longer true. Thus, merchandisers and processors, in order to protect themselves against substantial price rises, made greater use of the futures markets for hedging purposes. Producers, who were anxious to obtain the maximum price for their commodities, likewise were hedging in the futures market whenever it appeared to them that the futures price was favorable. Banks became increasingly reluctant to provide loans to producers, merchandisers, and processors on unhedged production or inventories.

The shift to a more market-oriented economy brought the general public into the futures markets in growing numbers. Speculators were attracted to the futures markets by the wide price swings and the possibility of large profits. Such an increase in trading by the speculative public, while useful to hedgers, brought with it potential problems. It was feared that relatively less affluent individuals, for whom commodities speculation presented unacceptable risks, might be brought into the market for tax and other reasons, and that the temptation to engage in fictitious and prearranged trades would be great.

In the early 1970's, consumers were becoming increasingly aware that futures markets had a direct effect on such matters as their grocery bills and the costs of their homes. Properly operating futures markets helped to hold down consumer prices by reducing middleman costs. Improperly operating futures markets, however, could have the opposite result. In order to assure that futures markets operated properly, and that the prices consumers pay were not artificially high, careful and efficient supervision of the markets was essential.

While the futures markets in a number of agricultural commodities had been regulated in varying degrees since 1922, many large and important futures markets were completely unregulated by the Federal Government prior to 1974. These included such agricultural and forestry commodities as coffee, sugar, cocoa, lumber, and plywood, plus various metals, including the highly sensitive silver market, and markets in a number of foreign currencies. A person trading in one of the then unregulated futures markets needed the same protection afforded to those trading in the regulated markets. Whether a commodity was grown, mined, or created, or whether it was produced in the United States or outside the United States, made little difference to those in this country who bought, sold, processed, or used the commodity, or to the United States consumers whose prices were affected by the futures market in that commodity.

By 1974, there were indications that futures markets would be further expanded to cover additional goods and services. Discussions were underway concerning futures markets in such things as home mortgages and ocean freight. It was apparent that a regulatory agency could not be expected to oversee the rapidly expanding and complex futures markets without additional tools with which to do the job, and without proper organization and funding. In addition to providing the tools that the regulatory body would need to prevent violations and to discipline violators directly, its role in supervising exchanges would

have to be substantially expanded. Exchanges were going to have to perform their regulatory role better in order to provide a viable market in which the public could have confidence. The Federal regulatory agency needed the authority to require that exchanges do so.

By 1974, the volume of futures trading had increased dramatically. Futures trading, however, continued to involve a trading population that was much smaller than that of those persons holding corporate shares traded on securities exchanges. The economic importance of futures trading to the general public and to the Nation had reached a level that warranted the creation of an independent agency to regulate the marketplace. It was time to establish a regulatory authority in the commodity field similar to the Securities and Exchange Commission, and to give that authority a strong law that would enable it to regulate trading in both agricultural and nonagricultural goods and services in the public interest. Congress consequently enacted the Commodity Futures Trading Commission Act of 1974.

VI.

The Commodity Futures Trading Commission Act of 1974 constituted a significant and substantial revision of the Commodity Exchange Act. In 1974, Congress extended the coverage of the Act to include not only the previously unregulated commodities, but also all other goods and articles, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in. Congress also created the Commodity Futures Trading Commission as an independent agency to administer the Commodity Exchange Act and granted the Commission exclusive jurisdiction over transactions involving futures contracts and certain other commodity-related activities.

The expansion in the scope of the Commodity Exchange Act and the creation of the Commission were designed to accomplish two basic goals: (1) to provide a uniform regulatory structure covering all futures trading in both the regulated and previously unregulated commodities and (2) to allow for the extension of the economic benefits of futures trading under this structure to those areas of commerce where the risk-shifting and price-discovery functions of futures markets might prove to be of value. In this connection, the 1974 amendments authorized the Commission to establish a new definition for the term "bona fide hedging" to replace the Act's previous definition.

In addition to granting the Commission exclusive jurisdiction over all forms of commodity futures trading, the 1974 amendments extended the Commission's jurisdiction to two other forms of commodity instruments—commodity options involving those commodities that had not been regulated prior to 1974 and leverage transactions for the delivery of gold or silver bullion or bulk gold or silver coins. The 1974 amendments continued to prohibit option transactions involving those agricultural commodities enumerated in the Act prior to 1974. However, Congress gave the Commission power to extend this prohibition to options involving the previously unregulated commodities and to any "new" commodities or to allow the offer and sale of these options subject to terms and conditions prescribed by the Commission.

The 1974 amendments also gave the Commission new oversight responsibilities and powers over the Nation's commodity exchanges. For

example, the Commission was empowered to designate a board of trade as a contract market for trading futures contracts in a commodity only if the board demonstrates that such trading will not be contrary to the public interest. Upon designation, a contract market must permit delivery of the commodity that is the subject of trading on that market at such delivery points as the Commission may prescribe as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. The Commission was authorized to review and approve all bylaws, rules, or regulations issued by the contract market that relate to terms and conditions in contracts of sale or to other trading requirements, except those relating to the setting of levels of margin. The Commission also was authorized to alter or supplement any bylaw, rule, or regulation of a contract market, insofar as necessary or appropriate, by rule, regulation, or order.

The 1974 amendments strengthened the sanctions available should the Commission find that a contract market or any employee, director, officer, or agent of such market is violating or has violated the Act or Commission rules adopted thereunder. The Commission may issue a cease and desist order and assess a civil penalty of not more than $100,000 for each such violation. The Commission was empowered to review disciplinary or denial of membership (or other form of access) actions taken by exchanges. The Commission was also granted broad power to direct a contract market to take such steps as the Commission determines are necessary to maintain or restore orderly trading in or liquidation of any futures contract, when the Commission has reason to believe that a market emergency exists.

The Commodity Futures Trading Commission Act of 1974 also brought the activities of three classes of commodity professionals under regulation for the first time. Congress made it unlawful for an individual to act as a commodity trading advisor or commodity pool operator unless registered with the Commission. In addition, Congress required the registration of persons associated with futures commission merchants who solicit or accept customer orders or who supervise persons engaged in that activity.

In an attempt to bring about inexpensive and expeditious adjudication of customer claims, Congress authorized the creation of two extrajudicial forums for resolution of customer complaints. First, each contract market was required to provide a fair and equitable procedure for the voluntary settlement by arbitration or otherwise of customers' claims and grievances not in excess of $15,000. Second, the Commission was directed to establish a reparations procedure for adjudicating customer complaints brought against commodity professionals and firms. Additional customer protection was contemplated by the provisions of the 1974 amendments that (1) authorized the Commission to determine whether and on what terms dual trading practices of floor brokers and futures commission merchants should be permitted, and (2) broadly proscribed fraudulent and deceptive practices by commodity trading advisors and pool operators.

The 1974 amendments greatly expanded the enforcement tools available under the Act. The Commission was empowered to sue in Federal district court for injunctive relief where it appeared that a person

had engaged, was engaging, or was about to engage, in conduct constituting a violation of the Act or the regulations thereunder. In addition, the dollar amount of penalties that could be imposed for violations was increased to $100,000.

In 1974, Congress determined that futures industry participants might want to form a self-regulatory organization, patterned after the National Association for Securities Dealers, Inc. Thus, the Commission was given the authority, at its discretion, to register and oversee the operations of futures associations that would serve the public interest by, among other things, establishing proficiency examinations for professionals and taking disciplinary action against persons engaged in illegal or unethical activities.

VII.

Drawing on the experience of the Commission during its first authorization period, the Futures Trading Act of 1978 improved and strengthened the statutory tools for directly regulating and overseeing the futures markets. Also, in recognition that the Commission's efforts and programs could be complemented by greater industry self-regulation and the assistance, where appropriate, of the States and other Federal agencies, that Act augmented prior measures and contained new measures designed to bring additional resources to bear on ensuring fair and honest dealings in those markets.

One of the most significant challenges facing the Commission after its creation in 1975 was the proliferation of unsound and, in many cases, unlawful practices in connection with the offer and sale to the public of commodity options traded on foreign exchanges. The Commission endeavored at great length to establish a regulatory framework for those transactions but ultimately decided to suspend most forms of options trading. The 1978 amendments to the Act codified this ban but provided for the resumption of options trading in this country after the Commission transmitted evidence of its ability to regulate such transactions to its oversight committees. The regulatory framework for a pilot program for commodity options trading is now in place and trading is expected to commence sometime in the latter half of 1982.

The frauds associated with the sale of commodity options also highlighted the need for the involvement of the States in the prosecution of violations of the Commodity Exchange Act. The States were explicitly authorized in 1978 to bring civil actions in United States district courts for injunctive relief or monetary damages against any person (other than a contract market, clearinghouse, or floor broker) for violations of the Act or any rule, regulation, or order of the Commission. This newly-granted authority supplemented, and did not displace, the ability of duly authorized State officials to proceed in State courts on the basis of alleged violations of their State's general civil or criminal antifraud statutes.

The 1978 amendments similarly recognized the interest of other Federal agencies in the activities of the Commission as the traditional vehicles for commodity trading were substantially expanded by the industry. Congress accordingly added to the Commodity Exchange Act provisions designed to ensure that the Commission maintained

communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission to keep them fully informed of, and to seek their views on, Commission activities that might be related to the responsibilities of those agencies. In addition, the Futures Trading Act of 1978 expressly provided that applications for designation as a contract market for contracts for future delivery of securities, issued or guaranteed by the United States or any agency thereof, must be submitted by the Commission to the Department of the Treasury and the Federal Reserve Board. The comments of those agencies, as well as the effect of such contracts on the debt financing requirements of the United States and the continued efficiency and integrity of the underlying market for Government securities must be considered by the Commission in approving, disapproving suspending, or revoking such designations or in taking any emergency action affecting such designated contract markets.

The 1978 amendments also provided that, before the Commission approves a change in a contract market's bylaws, rules, regulations, or resolutions, it must first publish the proposed change in the *Federal Register* if the contract market's proposal is of "major economic signicfiance." These amendments accorded interested persons at least 30 days in which to comment on proposals of this type.

The Commission was also empowered for the first time to require applicants for registration, and such persons associated with the applicant as the Commission may specify, to be fingerprinted as part of the application process.

Congress established the framework for an industry-wide self-regulatory organization comparable to the National Association of Securities Dealers when it enacted the Commodity Futures Trading Commission Act of 1974. The 1978 legislation included a number of additional provisions designed to foster the formation of such an organization. First, in response to the concerns of the Department of Justice that compulsory membership in a registered futures association might violate the antitrust laws, Congress expressly provided that such an association could require the membership of eligible persons if the Commission finds that compulsory membership is necessary to achieve the purposes and objectives of the Commodity Exchange Act. Second, a registered futures association was authorized to perform a portion of the Commission's registration functions. Finally, the contract markets were permitted to delegate to such an association their responsibility to provide an arbitration forum for the resolution of customers' claims and grievances. Pursuant to the provisions of the Commodity Exchange Act, the National Futures Association was registered with the Commission as a registered futures association in September 1981. It is anticipated that a number of regulatory functions currently performed by the Commission will be undertaken by the National Futures Association.

The 1978 legislation also provided that the Commission may develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission if it first reports its intentions to, and obtains the approval of, its oversight committees. The Commission is required to include in its report information relating to the feasibility and desirability of

collecting such fees. The 1978 Act further provided that any such fees are to be deposited into the Treasury of the United States as miscellaneous receipts.

VIII.

The present Commodity Exchange Act is based upon findings and conclusions of Congress that (1) transactions in commodity futures are carried on in large volume by the public, as well as by persons engaged in the business of buying and selling commodities in interstate commerce; (2) such transactions are susceptible to manipulation and control, and may generate sudden and unreasonable price fluctuations; and (3) such fluctuations are a burden upon interstate commerce and make regulation essential in the public interest. A fundamental purpose of the Commodity Exchange Act is to ensure fair practices and honest dealing on the commodity exchanges and to provide a measure of control over manipulative activity and speculative excesses that demoralize the markets to the injury of producers and consumers and the exchanges themselves.

Futures trading involves purchases and sales of contracts for delivery at some future date of certain quantities of specified commodities at fixed prices. In effect, the Commodity Exchange Act has required that futures trading in commodities be conducted at a commodity exchange designated as a "contract market" by the Commodity Futures Trading Commission. Futures trades are made by or through a member of such a commodity exchange. A separate futures market is established for each commodity traded on a contract market. The contract markets have the authority, within certain limitations, to admit members and select officers; discipline offenders and expel members; determine delivery months and contract terms; fix price fluctuation limits (the amount of permissible price change during a trading day); and establish margin requirements.

In order to qualify for designation as a contract market, a commodity exchange must meet certain conditions and requirements, including those covering the (1) maintenance of certain records and the preparation of reports on futures transactions, (2) prevention of dissemination of false, misleading, or inaccurate commodity information, (3) prevention of manipulation and other abusive trading practices, and (4) inspection of records by the Commodity Futures Trading Commission and the Department of Justice. In addition, the Commission must find that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest.

The Commodity Exchange Act provides many customer protections and remedies. The Act directs the Commission to promulgate and administer a regulatory program that includes registration of commodity professionals, segregation of customers' funds by futures commission merchants, establishment of dual trading guidelines, creation of a procedure for the adjudication of reparation claims, monitoring exchange arbitration procedures and disciplinary actions, and licensing of industry self-regulatory futures associations. Moreover, customers are afforded protection through the Commission's power to sue directly for injunctive relief and to invoke a full range of administrative remedies where appropriate to curb unlawful behavior.

The Commodity Futures Trading Commission was created in order to assure that a single expert agency would have the responsibility for developing a coherent regulatory program encompassing futures trading and related activities. Therefore, Congress has vested in the Commission exclusive jurisdiction to build upon the foundation provided by the Commodity Exchange Act in erecting a sound and strong Federal regulatory policy governing futures trading. (A discussion of the mechanics of futures trading is contained in appendix D.)

Need for Legislation

I.

The Commodity Futures Trading Commission Act of 1974 contains a "sunset" provision under which the Commission's funding authorization is limited to a fixed term of years. The 1974 Act and the Futures Trading Act of 1978 each contained funding authorizations for periods of 4 years. The "sunset" provision has afforded Congress an opportunity to reexamine and evaluate the provisions of the Commodity Exchange Act and the Commission's performance in 1978 and again in 1982.

The 1982 reauthorization is particularly timely in that it affords Congress an opportunity to revisit this area in light of the dramatic changes in the futures industry which have taken place since 1978. For example, 38 new futures contracts—ranging from gasoline and lumber to Treasury bills and Eurodollars—have been designated since the Commission's last reauthorization. (The names and addresses of commodity exchanges designated as contract markets and the commodities that these markets are designated to trade are set forth in appendices A and B.) In 1978, 53.2 million futures contracts were trade. By 1981, however, this figure had grown to 101.1 million contracts.

Similarly, the trading of futures contracts in agricultural commodities grew from 35.1 million contracts in 1978 to 54.5 million contracts in 1981. The popularity of futures contracts in financial instruments was clearly evident, as growth in the trading of these contracts outstripped all others expanding from 1.6 million contracts in 1978 to 20.1 million contracts in 1981. The trading of futures contracts in foreign currencies was also very popular, as trading grew from 1.3 million contracts in 1978 to 5.4 million contracts in 1981.

This surge in trading has been accompanied by increased use of futures markets by financial institutions and businesses to shift price risk in a manner comparable to the more traditional use of those markets by farmers and others involved in the marketing of grain and other agricultural products. The general public has also become increasingly active in the futures markets—not only as individual customers, but also through participation in professionally managed commodity pools and accounts. Not surprisingly, there has been a corresponding increase—to nearly 52,000 individuals and firms—in the number of persons registered with the Commission, and in the average amount of customers' funds held in segregation to margin, guarantee or secure futures trades—from approximately $5 million in 1979 to approximately $8 million in 1981. (The volume of commodity

futures contracts trade for fiscal years 1975 through 1981 are set forth in appendix C.)

II.

Other events also sparked the need for new legislation in this area. Chief among these events was a jurisdictional agreement, announced December 7, 1981, between the Commodity Futures Trading Commission (CFTC or the Commission) and the Securities and Exchange Commission (SEC). This agreement clarifies the jurisdictional and regulatory responsibilities of thes agencies with regard to the trading of futures contracts on securities indices, futures and options contracts on exempted securities, and options on foreign currencies. Each agency has submitted legislative proposals to its respective congressional oversight committees to implement that agency's portion of the agreement.

This agreement was made for the purpo- of ending the jurisdictional ambiguity between the CFTC and SEC which has hampered the development of new financial instruments and, in part, for the purpose of defusing a potential confrontation between these agencies. The stage for confrontation was set when the SEC, at the urging of the Chicago Board Options Exchange (CBOE), approved changes in CBOE exchange rules to permit the CBOE to offer exchange-traded option contracts on Ginnie Mae securities.[1] Futures contracts on Ginnie Mae securities have been traded since 1975 at the Chicago Board of Trade under the authority of the Commodity Exchange Act and the regulatory jurisdiction of the CFTC.

After the SEC entered an order granting the CBOE request to trade these option contracts, the Chicago Board of Trade filed a petition in the Seventh Circuit Court of Appeals, asking that the SEC order be set aside on the basis, among other things, that these contracts were commodity option contracts and, hence, are subject to the provisions of he Commodity Exchange Act and the regulatory jurisdiction of the CFTC, rather than the securities acts and the SEC. The CBOE subsequently intervened in this action, taking the side of the SEC while the CFTC filed an *amicus curiae* brief in support of the Chicago Board of Trade position. A three-judge panel of the Seventh Circuit recently ruled that the SEC did not have jurisdiction to oversee the trading of options contracts on Ginnie Mae certificates and that the Commodity Exchange Act governed the contracts. (*Board of Trade of the City of Chicago* v. *SEC*, No. 81-1660 (7th Cir. March 24, 1982).) The jurisdictional agreement is not intended to alter the traditional regulatory roles of the CFTC and the SEC but is necessary to clarify their roles so that both may concentrate on their respective responsibilities.

III.

A further matter giving impetus to this legislation was the desire on the part of both the Commission and the States to share information and responsibility for the prosecution of certain fraudulent quasi-commodity transactions not conducted on commodity exchanges. Dur-

[1] Ginnie Mae securities are certificates that represent ownership interests in pools of Government-insured residential mortgages. The owner of a Ginnie Mae certificate receives a portion of the income generated as mortgagors in the pool repay their loans, and the timely payment of principal and interest is guaranteed to the certificate holder by the Government National Mortgage Association.

ing the past 4 years, it became clear that the Commission alone cannot be solely responsible for policing every fraudulent operation with a "commodity" theme. While present law empowers the States to file lawsuits in Federal court to enforce the provisions of the Commodity Exchange Act, to conduct investigations and compel the production of documents and to proceed in State court on the basis of any alleged violation of any State general civil or criminal antifraud statute, there was a belief on the part of many that more needed to be done to encourage the States to become more active in this area. In light of this need, the Committee determined to address this issue.

IV.

Another issue giving impetus to this legislation was the desire on the part of the Committee members to repeal the total statutory ban on the trading of options or agricultural commodities. The members noted that farmers could, in theory, benefit from the use of agricultural options, that the option concept had changed radically in the 46 years since the statutory ban was enacted and that regulatory structures to prevent abusive practices in this area have been greatly improved. Support for the repeal of this ban was also evident in the agricultural and commodities industries. Consequently, the Members decided to address this issue in the course of considering the bill.

Discussion of Major Issues

CFTC–SEC Jurisdictional Agreement

I.

The bill, as reported by the Committee, contains amendments to the Commodity Exchange Act that would codify the CFTC portion of the jurisdictional agreement reached between the CFTC and the Securities and Exchange Commission. This jurisdictional agreement was developed for the purpose of resolving the jurisdictional ambiguity between the regulatory responsibilities of the CFTC and the SEC. As outlined elsewhere, this ambiguity led to an anomalous situation in which these agencies were indirectly opposing each other in court. The SEC portion of the agreement is contained in S. 2260, introduced by Senator D'Amato. That bill is being considered by the Committee on Banking, Housing, and Urban Affairs.

The desirability of a resolution by the two agencies of the issues between them has become increasingly clear. The growing demand for new products related to securities or financial instruments, either as investments or as price hedging tools, has magnified the importance of removing the jurisdictional confusion that has hampered the development of the markets for such instruments. The confusion results in part from amendments to the Commodity Exchange Act that (1) expanded the definition of "commodity" to embrace not only tangible goods but also intangible rights and interests, and (2) gave the CFTC "exclusive jurisdiction" over agreements and transactions "involving" futures trading in commodities, while preserving the SEC's preexisting authority over securities trading and the securities markets.

The agreement and the bill reported by the Committee have three basic objectives.

The first objective is to eliminate the jurisdictional issues between the agencies that has hampered both the commodities and securities markets in developing new financial instruments. The Committee believes that both industries deserve a level of certainty about who may trade what and when.

The second objective is to avoid upsetting the *status quo* in the marketplace. No demonstrable public benefit can be derived by changing the rules of trading in existing and viable markets.

The third objective is to maintain, to the extent practicable, the traditional roles of the two agencies. Thus, the CFTC would continue to regulate markets and instruments that serve a hedging and price discovery function and the SEC would regulate markets and instruments with an underlying investment purpose.

The Committee believes that S. 2109, as reported by the Committee, accomplishes these objectives. The bill not only should foster cooperation between the agencies but should maintain the traditional regulatory roles played by both. It will provide the marketplace with the freedom to choose the kinds of instruments best suited to the needs of our economy.

II.

In broad outline, the Committee bill would leave the CFTC with regulatory responsibility for all futures trading and for all trading of options on futures contracts. (The SEC would continue to be responsible for the regulation of options based on individual stocks.) In addition, the agreement specifies that the SEC will regulate all options directly on exempted securities, such as debt instruments issued or guaranteed by the United States Government, and options on certificates of deposit. The trading of options on foreign currencies will be regulated by both agencies; the SEC will regulate these options when they are traded on a national securities exchange, the CFTC will regulate them when they are traded other than on a national securities exchange. The bill makes explicit that the CFTC's exclusive jurisdiction over commodity pools does not abrogate the applicability of certain aspects of the Federal securities laws to securities issued by commodity pools and sold to the general public. The bill also prohibits the designation of futures contracts based on individual corporate or municipal securities, reserving for further study the issue of the appropriate jurisdictional framework for futures contracts and options on futures contracts based on these securities.

III.

Since 1973, national securities exchanges have traded options on securities under the regulatory structure administered by the SEC. However, the SEC's authority to regulate such trading on exempted securities was seriously questioned in *Board of Trade of the City of Chicago* v. *SEC* (No. 81–1660, 7th Cir., March 24, 1982). The Committee bill amends the Commodity Exchange Act to provide that the Act would not apply to options on securities or securities aggregates, and the CFTC would not be permitted to designate a board of trade

as a contract market for the trading of such instruments. The CFTC would, however, continue to have exclusive jurisdiction over all permissible futures contracts based on exempted securities as well as options on those futures contracts.

IV.

Pending further review of appropriate regulatory systems for trading in such futures, the Committee bill would prohibit the trading of futures (and options on futures) on individual corporate or municipal securities, or contracts based on the value of such a security. The Committee understands that the CFTC and the SEC intend to study further the issues raised by such trading with a view toward a future recommendation to lift this restriction. This temporary foreclosure of trading would not apply to futures (or options on futures) on exempted securities, except municipal securities.

V.

The Committee bill also resolves differences between the CFTC and the SEC with respect to stock index futures. Traditionally, the SEC has expressed concern that trading in such a futures contract would have an adverse impact upon the Nation's equity markets as well as the SEC's ability to ensure manipulation-free securities trading. This concern is reflected in the bill in the structure for considering designation applications for stock index futures. The bill preserves the CFTC's exclusive jurisdiction over the decision whether to permit such a futures contract to be traded, but at the same time ensures that any concerns expressed by the SEC will be considered carefully.

In designating futures contracts based on stock indices (or options on such contracts), the CFTC must find that each such contract (or option on such contract) meets the following criteria:

(1) Settlement of the contracts must be made in cash or by means other than the delivery, transfer, or receipt of a security. Exempted securities, however, may be delivered, transferred, or received in settlement of the contracts.

(2) The contracts may not be readily susceptible to price manipulation nor to causing or being used in the manipulation of the prices of the securities making up the underlying stock index.

(3) The stock index upon which the futures of option contract is based must be constructed from a broad group of securities.

These criteria are intended to provide adequate flexibility for the market to respond to the needs of participants, while assuring that only broad-based securities index futures contracts that the Commission finds are not readily susceptible to manipulation may be authorized.

The bill also requires that the CFTC give the public an opportunity to comment on whether a proposed stock index futures contract or options thereon meet the criteria outlined above and consult with the SEC prior to designating the trading of such futures or options contract. If the SEC objects to the designation of a particular stock index futures or options contract on the grounds that the above criteria are not satisfied, it may seek an oral hearing before the CFTC. If the

CFTC designates a contract for trading over the objections of the SEC, the SEC would have the right to seek judicial review of the CFTC's decision under the provisions of section 6(b) of the Commodity Exchange Act. If a hearing is held in connection with disapproval proceedings of a stock index futures or options contract application, the SEC would be permitted to participate in the hearing as an interested party.

VI.

While the CFTC has adopted extensive regulations governing the activities of commodity pool operators and has exclusive jurisdiction with respect to "accounts . . . involving" futures, the SEC has taken the position that the activities of a commodity pool as a company, *i.e.*, its capital-raising and certain subsequent activities are subject to the Federal securities laws. The bill makes this explicit by providing that the Commodity Exchange Act does not relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the SEC or to any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities in a commodity pool, or the obligations or duties of persons engaged in transactions with respect to such securities, or reporting requirements applicable to a commodity pool.

VII.

The Committee believes that the division of regulatory responsibility set forth in the bill will benefit both the futures and securities industries as well as the trading public. Ultimately, the forces of the marketplace will determine which new instruments will succeed in providing useful economic benefits to the wide range of financial institutions that have been using and awaiting new trading tools to limit risks and provide greater certainty in financial management. However, the Committee expects that both the CFTC and the SEC will work to make their agreement a success, and the Committee believes that the Congress should enact the legislative proposals to carry out this agreement in its entirety.

User Fee Study—Period of Reauthorization

The issue of the imposition of Federal user charges or fees on the commodities industry was one of the more controversial issues with which the Committee dealt during the consideration of the bill. In the enactment of the Independent Offices Appropriations Act of 1952 (31 U.S.C. § 483a), Congress expressed its intent that, to the extent possible, agencies of the Federal Government should be self-sustaining. The Commission has used this statute as authority to institute and collect a $25 filing fee which is paid when a reparations claim is docketed with the Commission. In fiscal year 1981, the Commission collected $20,875 from this reparations fee and remitted these funds to the United States Treasury.

The Commission also collects a fee in connection with a registrant's initial registration and the periodic renewal of this registration. The amount of the fee charged varies, depending upon the type of regis-

tration sought [1] and is collected under the statutory authority contained in section 8a(4) of the Act. In fiscal year 1981, the Commission collected $1,002,919 from these registration fees.

In the Futures Trading Act of 1978, Congress separately authorized the Commission to "develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission." Before implementing any such plan, the Commission must report its intention to do so to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, and the plan may not be implemented until approved by those Committees.

In preparing for this reauthorization and as a result of strong urging from the Office of Management and Budget, the Commission analyzed the principal fees charged by the commodities and securities exchanges and the user charges or fees paid by the securities industry to the Securities and Exchange Commission. The Commission also examined the anticipated sources of funding for the National Futures Association and reviewed the merits of various types of user charge or fee systems.

The Commission considered seven alternative methods of user charge assessments before deciding to recommend that a transaction fee be enacted. The user charge which was recommended was to be levied on each futures or option contract traded on the exchanges and on each leverage and dealer option transaction entered into. The respective exchanges were charged with collecting the fees levied on the contracts traded on their market and remitting these fees to the Treasury, while the leverage and dealer option firms were charged with remitting the fees levied on those transactions to the Treasury. The charge applicable to exchange-traded contracts was to be two-tiered in nature, with a lower charge (6 cents per side) being levied on persons who are members of exchanges or other self-regulatory organizations and a higher charge (12 cents per side) being levied on all other persons. The leverage and dealer options merchants would pay a fee of $3 for each dealer option or leverage transaction entered into.

The amount of fees collected for a given year was to be limited to no more than the Congressional appropriation for the Commission for that year. The Commission would also have had authority to reduce, suspend or waive the fee, or any portion of it, if the fee had any significant adverse effect on any market, person, or class of persons.

During the course of the hearings held in connection with this bill, a number of witnesses testified that the imposition of the user fee at this time could lead to the demise of the National Futures Association, the fledgling self-regulatory organization recently registered by the Commission. These witnesses pointed out that the National Futures

[1] The registration and renewal fees charged by the Commission are as follows:

Category of registrant	*Amount of fee per registration/renewal*
(a) Futures Commission Merchant	$200 (plus $6 per office for each branch or correspondent office.)
(b) Commodity Trading Advisor	$50.
(c) Commodity Pool Operator	$50.
(d) Floor Broker	$20.
(e) Associated Person	$20.

Association and the transaction-based user fee would compete for similar sources of funding and that the industry was generally unwilling to pay both fees.

These witnesses also pointed out that industry members were paying substantial sums to fund the ongoing self-regulatory programs undertaken by the exchanges. It was unclear how much credit, if any, should be given to the industry members for these contributions, when attempting to measure the public versus private burdens borne in connection with commodities regulatory programs. The incidence of the user fee was also unclear, and its effect on farmers, processors, and other hedgers was not known. Further, it was not possible to obtain answers to these questions within the time frame that the Committee had available to it.

In light of these considerations, the Committee decided not to impose a user charge at this time, but rather to require the Commission to conduct a study, to be completed not later than January 1, 1984, which would focus on (1) the effects of a transaction fee on market liquidity, (2) the portions of the Commission's appropriation benefiting the general public versus the market participants of the Nation's commodity markets, and (3) the incidence of such a fee, including its impact on producers, processors, manufacturers, and other hedgers.

The Committee also elected to limit the reauthorization period to two years (to expire September 30, 1984) in order to force reconsideration of the user fee issue upon completion of the Commission study. In the hearings before the Subcommittee on Agricultural Research and General Legislation, most of the witnesses who addressed the issue of the period of reauthorization recommended that the Commission be reauthorized for at least 4 years or longer. The Committee wishes to make it clear that the shorter reauthorization period is not intended to reflect any dissatisfaction on the part of the Committee with the performance of the Commission. While there are certainly areas where improvement can be made, the Committee believes the Commission has developed into a mature regulatory agency worthy of reauthorization.

State Jurisdiction and Information Sharing

I.

Since the Commission's reauthorization in 1978, it has become clear that the Commission, by itself, cannot be primarily responsible for policing every enterprise operating under a "commodity" theme. The shape and form of these illegal enterprises are unlimited, given the inventiveness of the persons perpetuating the schemes. These individuals open offices with plush trappings, stuff them with "watts line" telephones, written "pitches" or sales scripts, and eager telephone solicitors and offer members of the public investment vehicles in precious metals, coal, diamonds, gasoline, fuel oil, and strategic metals. Making promises of quick profit at little or no risk, these unscrupulous persons and their sales staffs seek little more than to part the hapless investor from his money.

These persons often seek to postpone the day on which they are to deliver the goods described in their investment vehicles by not fixing a

delivery date or by establishing one far in the future, by offering to write new contracts at terms more favorable to the customer, or by giving the customer a litany of excuses to justify their nonperformance. When large numbers of customers can be put off no longer, these persons usually close down their operations and disappear with the customers' money, usually to appear in a new location under a new name, but carrying out the same scheme a second, third, or fourth time.

The current provisions of section 6d of the Act give the States a role to play in combatting this illegal activity. These provisions authorize State officials to go into Federal district court to seek injunctions or civil damages for violations of the Commodity Exchange Act. The Act also provides that State officials may sue in State courts under their general civil or criminal antifraud statutes. Because of certain statutory and practical impediments to full State participation in the law enforcement process, however, State actions under section 6d thus far have been limited.

The Committee is eager to encourage the States' use of section 6d and, in addition, to involve them more extensively in actions against those who offer off-exchange investments under a "commodity" theme. The bill contains two major statutory amendments designed to achieve these aims: a so-called "open season" provision relating to State jurisdiction over off-exchange "commodity" enterprises, and a provision for information sharing with State and foreign governments.

II.

The Committee bill includes a provision proposed by the Commission to declare "open season" on off-exchange "commodity" enterprises operating outside the Act's regulatory structure by specifically authorizing all Federal, State, and local officials to prosecute these persons and enterprises under any relevant law or regulation. This proposal will be implemented by adding a new section 12(e) to the Act which explicitly permits the application of other Federal and State laws to activities and persons who unlawfully engage in commodity transactions outside the Act's regulatory structure.

Under this "open season" provision, it would be made clear that State Attorneys General or securities administrators would be authorized to take administrative or other legal action, under their own laws against persons selling certain off-exchange commodity investments and against persons engaged in activities requiring registration or designation by the Commission who have not been so registered or designated. Activities that are subject to the comprehensive regulatory powers of the Commission, including exchange-traded futures, foreign futures (except as otherwise specified by the Commission), authorized commodity options, and regulated leverage transactions will remain within the Commission's exclusive jurisdiction.

The Committee bill does not alter the current exclusive jurisdiction of persons and firms who conform their activities to the regulation of persons and firms who conform their activities to the requirements of the Commodity Exchange Act. The Commission' regulations embody a uniform, comprehensive, nationwide scheme of regulation. The Committee continues to endorse the congressional judgment that a single, uniform Federal regulatory program in this area is prefer-

able to 50 different and arguably conflicting schemes of State regulation.

III.

The Committee bill proposes that the Commission be given explicit authority to share information with States and foreign governments which is now subject to the confidentiality provisions of section 8 of the Act. Under this proposal, section 8(e) of the Act will be amended to permit the Commission to provide these governmental entities with any information in its possession, so long as the information is provided for law enforcement purposes and the Commission is satisfied that the information will be disclosed only in connection with law enforcement proceedings brought under Federal, State, or foreign law to which the information recipient is a party.

While the Committee believes that providing this information to States and foreign governments will be very beneficial to those entities, the Committee provision allows the subsequent disclosure of this information by the States and foreign governments only in connection with adjudicatory actions and proceedings. Such disclosure, of course, could be made in administrative, as well as court, actions that are adjudicatory in nature.

The bill also provides that the Commission shall, upon request, provide any State with registration information maintained by the Commission on any registrant. The Commission shall provide this registration information to the States without request if the Commission determines that the information may be appropriate for use by the States. This provision is a variation of a provision contained in S. 2210, introduced by Senator Roth and others.

There are several benefits to be gained by providing for the free flow of this information between the Commission and the States. For example, the availability of this information will aid States in preparing their own cases. It will also enable them to assess whether to join litigation being prepared by the Commission. Further, the Committee hopes cooperation between the Commission and the States will be improved by making information sharing a two-way process.

There are also benefits to be gained through the sharing of information with foreign governments. For example, there may be occasions when American citizens will be better protected if foreign law enforcement agencies have access to Commission information. Persons operating from foreign bases, such as Canada or Europe, or who move offshore to what they hope will be island havens, may find the local governments more hostile if the Commission's evidence against them is shared with those governments.

At the same time the Committee intends that the Commission use this power to share information with discretion. There is particular sensitivity to this issue in foreign countries. The Commission should, whenever possible and without interfering with the performance of its duties, endeavor to notify the government of a trader's citizenship before sharing information with a third country.

IV.

The provisions of S. 2210 pertaining to the issues of State jurisdiction over commodity transactions and the sharing of information,

introduced by Senator Roth and others, were carefully considered by the Committee in the course of developing S. 2109. The Committee noted that the proposals in S. 2210 on these issues went somewhat further than those made by the Commission. The Committee elected to adopt the proposals put forward by the Commission, with some modifications taken from S. 2210. The Committee believes that the proposals in the bill that deal with these issues will meet the problems highlighted by both Senator Roth in his subcommittee hearings, the Commission in its testimony, and the testimony of other witnesses heard during the course of hearings on S. 2109, while at the same time preserving the Commission's exclusive jurisdiction over persons and transactions within the regulatory structure of the Act.

Approval and Enforcement of Contract Market Rules

1.

Approval of contract market rules

The Committee bill includes several changes in the provisions of the Act relating to Commission review of contract market rules. These changes will streamline the rule review process by limiting the kinds of rules that must be submitted for prior Commission approval and by placing a limit on the amount of time the Commission may take to consider a proposed rule before the exchange submitting the rule may put it into effect.

Current section 5a(12) of the Act gives the Commission an active oversight role in the area of contract market rulemaking. Under current law, contract markets are required to submit for Commission approval all bylaws, rules, regulations, and resolutions ("rules") relating to contract terms and conditions or other trading requirements, except rules concerning the setting of margin levels. This section of the Act authorizes the Commission to exempt certain operational and administrative rules from the requirements that they be submitted to the Commission for its prior approval and also authorizes the Commission to specify the terms and conditions under which a contract market, in an emergency situation, may adopt temporary rules dealing with trading requirements.

In addition, current section 5a(12) requires publication in the *Federal Register* of the full text of all rules that the Commission determines to be of major economic significance at least 30 days prior to approving such rules. The Commission is given 60 days after the receipt of rules of major economic significance (30 days in the case of all other rules) to approve or disapprove them, unless it notifies the contract market of its inability to make a determination within the specified time. Current law requires the Commission to approve contract market rules that are not in violation of the Act or the Commission's regulations and to disapprove rules, after notice to the contract market and opportunity for hearing, if the rules are in violation of the Act or regulations. The standards applied in disapproving contract market rules also permit the Commission to disapprove rules that conflict or are inconsistent with the policies, purposes, or public interest embodied in the Act.

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II.

During the reauthorization hearings, both the Commission and the industry expressed concern with certain aspects of the present contract market rule review process, in particular the length of time required for some rule reviews. The Commission recommended several amendments to current section 5a(12) which is argued would streamline the rule review process while maintaining the Commission's essential oversight role in this area. In particular, the Commission proposed that only rules relating to contract terms and conditions need be approved by the Commission prior to their implementation by the contract market. While contract markets would be required to submit all other rules to the Commission (except those dealing with the level of margin), such rules could be implemented by the contract market 10 days after their receipt by the Commission, unless the exchange requested review or the Commission determined that the rule should be reviewed.

The Commission also proposed changing the requirement that the full text of proposed rules of major economic significance be published for comment in the *Federal Register* and, instead, recommended publication of a short description of the proposed rules in the *Federal Register*. The Commission also recommended deletion of the current statutory provision that gives its authority to exempt administrative and operational rules from the requirement that they be submitted to the Commission since, under the Commission's proposal, such rules could be implemented 10 days after they were submitted to the Commission.

At the subcommittee hearings, industry representatives, while agreeing with the Commission's assessment that improvement in the rule review process was needed, disagreed with the Commission on the manner in which such changes could be made. Industry representatives stated that the Commission should not be allowed to exceed its statutory authority with respect to the review of contract market rules and that the Commission should be required to expedite the rule review process. Exchange officials recommended several alternate amendments to current section 5a(12) of the Act.

In particular, industry representatives recommend that exchanges be required to submit to the Commission only rules of general applicability to market participants. This proposed change would exclude from Commission review rules concerning particular persons or groups who are not market participants, such as exchange employees or board members, actions applying approved rules in particular cases, clearinghouse rules and procedures implementing approved rules. Industry representatives also proposed deletion of the statutory provision that permits the Commission to obtain an extension of time for considering proposed rules or rule changes when the Commission is unable to make a determinaton as to the proposed rule or rule changes within the specified time period.

In addition, exchange officials recommended several changes in the present law with respect to the disapproval process for contract market rules. These proposals included an amendment specifying that: (1) a hearing on the record would be required for disapproval proceedings; (2) the Commission notify an exchange of the basis for dis-

approving a proposed rule; and (3) if a disapproval proceeding were not completed within 180 days after the Commission received the proposed rule, the contract market would be free to implement the rule pending final Commission action. The industry representatives also proposed deleting the requirement that rules of major economic significance be published for comment in the *Federal Register*.

III.

The Committee, while reaffirming the Commission's active oversight role in the area of contract market rule review, was concerned that exchanges receive timely consideration of the rules which they are required to submit to the Commission for its approval. The Committee believes that the Commission's proposal to limit the requirement of prior Commission approval to contract terms and conditions should simplify and expedite the rule review process, and the Committee bill therefore includes this provision. The Committee also adopted the Commission's companion recommendation that permits all other contract market rules to be implemented 10 days after they are submitted to the Commission, unless the exchange requests a review by the Commission or the Commission decides to review such rules. These changes will release a substantial portion of contract market rules from the requirement of prior Commission approval, thereby permitting earlier implementation of such rules and providing some savings of Commission resources.

To assure that the Commission retains responsibility for deciding whether to review rules submitted under the 10-day provision, the Committee bill provides that the determination to review any rules for approval or disapproval cannot be delegated by the Commission to its staff. Furthermore, the Committee bill deletes the provision of current section 5a(12) pertaining to administrative and operational rules, since the Committee expects that rules which would be so classified will be covered by the 10-day requirement.

Nevertheless, the Committee desires that those remaining rules for which Commission approval is required, requested, or specified by the Commission prior to their implementation by contract markets be given timely consideration by the Commission. The Committee bill therefore provides that if the Commission has not approved a proposed rule or instituted disapproval proceedings within 180 days after the rule has been submitted, the contract market may implement the rule. If a disapproval proceeding is not completed within 1 year after the rule is submitted to the Commission, the contract market may also implement the rule, until such time as the rule is disapproved. The Committee notes, however, that such a rule should be not considered approved by the Commission. In the case of disapproval of contract market rules, the Committee decided to maintain the provision of current law which requires appropriate notice and opportunity for hearing and rejected the proposal that a hearing on the record be required for rule disapproval proceedings.

While the Commission has followed the practice of informing the contract markets of the basis upon which a rule was disapproved, the Committee bill expressly includes this requirement in section 5a(12). The Committee bill also amends section 5a(12) to require publication

in the *Federal Register* of a short description of proposed rules or rule changes that are of major economic significance, instead of the full text of the rules. The Committee believes that this provision will serve the purpose of informing interested persons while not significantly retarding the rule review process. Since the Committee was satisfied that the current provisions of section 5a(12) pertaining to margin setting authority and temporary emergency rules are appropriate, no amendments to these provisions were made.

Enforcement of rules by contract markets

Section 5a(8) of the Act requires that contract markets enforce all bylaws, rules, regulations, and resolutions relating to the terms and conditions of their futures contracts or other trading requirements that have been approved by the Commission under section 5a(12) of the Act. Section 5a(8) also requires contract markets to revoke and not to enforce any rules that have been disapproved by the Commission.

The Committee bill amends section 5a(8) of the Act, as recommended by both the Commission and representatives of the industry, to provide a statutory basis for requiring that exchanges enforce rules which they must now enforce pursuant to the provisions of Commission Regulation 1.53. This regulation, which became effective on July 17, 1975, requires contract markets to enforce all rules relating to terms and conditions of future contracts or other trading requirements that were in effect as of July 18, 1975, until or unless such rules are reviewed and disapproved by the Commission under section 5a(12). At present, there are a number of contract market rules that the Commission has not reviewed which predate the effective date of section 5a(12).

The Committee bill also contains a Commission proposal to amend section 5a(8) of the Act to require that contract markets enforce all rules that become effective under section 5a(12), as well as those rules approved by the Commission under that section.

Approval Process for New Futures Contracts

In connection with the consideration of the bill, the Committee examined sections 5(g) and 6 of the Act. Section 6 provides that a board of trade is entitled to a hearing on the record in the event the Commission refuses to approve a new contract that it has submitted. Section 5(g) of the Act requires that, in order to have a new futures contract approved, a board of trade must demonstrate that the proposed futures contract will not be contrary to the public interest. The legislative history of section 5(g) indicates that the public interest standard includes an economic purpose test which involves a determination that the proposed futures contract can be expected to be used, on more than an occasional basis, for hedging or basing the price of cash commodity transactions.

While the Commission did not propose any statutory changes in its general authority to approve new futures contracts for trading, witnesses at the subcommittee hearings recommended changes in sections 5(g) and 6 of the present law. Industry officials testified that the Commission's contract market designation process has been slow and has hindered market innovation. In contrast, the General Accounting

Office, which reviewed the Commission's major programs, including the procedures for approving new contracts, testified that the "Commission has focused much effort on approving new contracts at the expense of reviewing contracts which are being traded".

Two explicit changes in the Commission's authority to approve new contracts were proposed by industry representatives. The first recommended change was the substitution of a "hedging or risk management" standard for the current "public interest" standard in section 5(g). However, the hedging/risk management standard fails to address the important price discovery function performed in many futures markets. In addition, the Commission Chairman testified that it is necessary for the Commission to go beyond a hedging/risk management criterion and take into account broader issues, such as the possible effect of a proposed futures contract on the underlying cash market. The Committee notes that section 2(a)(8)(B) of the Act expressly requires that the Commission consider the effect, if any, which new futures contracts based on Government issued or guaranteed securities may have on the Government's debt financing requirements and the continued efficiency and integrity of the underlying market for Government securities.

In view of the Commission's need to consider the possible detrimental effects, as well as the broader range of salutory effects associated with new futures contracts, the Committee declined to amend the present language of section 5(g) of the Act, thus leaving the public interest standard unchanged.

Proposals were also made to amend section 6 of the Act. These proposals included a 6-month time limit for Commission consideration of new contracts. In the case of a contract disapproval, the affected exchange would have 90 days in which to request a hearing on the record, which would have to commence within 30 days of the request. These time limits were proposed for the purpose of limiting delays in the contract approval process.

The following table shows the length of time from the date of submission of new contract applications to the date of approval of such contracts for all contracts approved in 1981.

Exchange and contract	Date submitted	Date of Commission approval	Trading began
NOCE: Milled rice	Oct. 15, 1976	Feb. 12, 1981	Apr. 9, 1981.
NOCE: Rough rice	do	Apr. 8, 1981	Apr. 10, 1981.
NOCE: Cotton	Feb. 11, 1977	June 30, 1981	July 7, 1981.
NOCE: Soybeans	Mar. 20, 1977	Oct. 27, 1981	Oct. 29, 1981.
CME: Italian lira	Sept. 4, 1979	Sept. 30, 1981	
CBT: Long-term T-note	Oct. 17, 1979	Sept. 23, 1981	
CBT: Short-term T-note	do	Sept. 30, 1981	
NYME: New York Harbor unleaded gas	Dec. 27, 1979	Sept. 1, 1981	
NYME: New York Harbor leaded gas	do	do	Oct. 5, 1981.
CBT: Domestic CD	Dec. 28, 1979	July 21, 1981	July 22, 1981.
NYME: Gulf coast heating oil	Jan. 3, 1980	Aug. 4, 1981	Aug. 17, 1981.
CBT: Eurodollars	Jan. 10, 1980	Dec. 15, 1981	
CBT: Sunflowers	Jan. 28, 1980	Nov. 24, 1981	
CME: Domestic CD	Apr. 14, 1980	July 28, 1981	July 29, 1981.
CME: Eurodollars	do	Dec. 8, 1981	Dec. 9, 1981.
NYFE: GNMA-CD	May 30, 1980	Sept. 23, 1981	
NYFE: Domestic CD	July 3, 1980	June 30, 1981	July 9, 1981.
CME: Plywood	Aug. 19, 1980	do	July 28, 1981.
MACE: 15-year T-bond	Sept. 4, 1980	Sept. 9, 1981	Sept. 18, 1981.
NYFE: Eurodollars	Feb. 5, 1981	Dec. 15, 1981	
NYME: Gulf coast unleaded gas	May 26, 1981	Oct. 27, 1981	
NYME: Gulf coast leaded gas	do	do	Dec. 14, 1981.

Source: Commodity Futures Trading Commission (Mar. 10, 1982).

Four of the new contracts approved during 1981 were approved for trading on a newly authorized board of trade, the New Orleans Futures Exchange. The Committee recognizes that there has been a significant reduction in the time used by the Commission to consider new contract applications. From the beginning of 1978 until the end of 1981, the Commission designated 43 new contracts: 5 during 1978, 7 during 1979, 9 during 1980, and 22 during 1981.

While the Committee is persuaded that a time limit on Commission consideration of new contracts is desirable, it is also concerned that, if the period were set at 6 months, the Commission could be unduly restricted in carrying out its responsibilities. This would be particularly true with respect to new, complex contracts with which the Commission has no previous experience. In addition, the Committee is aware that the Commission often received incomplete or inadequate contract proposals in the past which have required additional analysis and significant revisions before the contracts were ready for Commission consideration. Furthermore, while the resources available to the Commission to evaluate new contracts are relatively fixed over significant periods of time, several proposed futures contracts are often received by the Commission in rapid succession.

In view of the importance of timely and informative government action, the Committee considered it reasonable to impose a 1-year time limit on the Commission's consideration of new contract applications and that the Commission specify, in the instance in which a new contract is disapproved, the basis for such a disapproval. The Committee believes that the 1-year time period is adequate to perform satisfactory evaluations of proposed futures contracts. However, in recognition of the difficulties that incomplete contracts pose, the Committee bill includes a provision that the 1-year term does not include the period from the time the Commission notifies a board of trade that its application is materially incomplete or deficient until the time the Commission receives an adequately revised application from the board of trade.

Registration Provisions

The Committee considered several changes in the registration provisions the Act and made several amendments to the Commission's existing statutory authority in this area. The principal registration issues considered by the Committee included: conditional or restricted registration and temporary licensing; authorization to delegate registration functions; an extensive enumeration of the grounds for registration disqualification; registration of agents of futures commission merchants as introducing brokers; registration of and application of antifraud provisions to associated persons of commodity trading advisors and commodity pool operators; responsibility of registrants for the sales activities of their associated persons; and extension of testing authority to all persons required to register with the Commission.

Conditional or restricted registration and temporary licensing, delegation of registration functions and statutory disqualification of registrants and applicants for registration

Section 8a of the Act authorizes the Commission to refuse to register a person if the person's registration has been suspended (and the suspension has not expired) or has been revoked. In addition, this section of the Act authorizes the Commission to refuse to register a person if it is found, after opportunity for a hearing, that the person is unfit to be registered because the person has engaged in practices prohibited by the Act, has been convicted of a felony, has been debarred from contracting with the United States, has willfully made false statements on his application or has omitted to state material facts thereon, has failed to meet minimum financial requirements in the case of a futures commission merchant, or for other good cause. Current law authorizes the Commission, after an opportunity for a hearing, to suspend or revoke a person's registration for the same reasons as would warrant a refusal to register the person. While current law provides for registration and for the suspension, revocation or denial of registration, there is no provision authorizing the Commission to register applicants conditionally, to restrict their registration, or to issue a temporary license to an applicant.

The Committee adopted a number of amendments to streamline the registration process. The Committee amended section 8a to authorize the issuance of temporary licenses for periods of up to 6 months to applicants who appear qualified, while a complete fitness check is being conducted on the applicant. The Committee also adopted an amendment to permit the Commission to register conditionally and restrictively in instances in which neither a denial of registration nor an unconditional or unrestricted registration would be appropriate.

In addition, the Committee adopted an amendment which provides that the Commission may delegate any portion of its registration functions in accordance with rules that the Commission approves. Under the current law, the Commission is authorized to delegate its registration responsibilities with respect to associate persons of futures commission merchants and floor brokers. The intent of this amendment is to permit an entity such as a registered futures association to perform any portion of the Commission's registration functions. The Committee also added an amendment providing express authority to a registered futures association, in connection with the performance of registration functions delegated to it by the Commission, to collect the fingerprints of its members and to submit them to the Attorney General for identification and screening.

The Committee also adopted an amendment to section 8a of the Act which adds to current law a detailed system of statutory disqualifications applicable to all persons registered or seeking registration under the Act. This system is composed of two parts: the first part is contained in an amendment to section 8a(2) of the Act and the second in an amendment to section 8a(3).

Under the amendment to section 8a(2), the Commission will be given the authority to refuse to register, to register conditionally, to suspend or to place restrictions on the registration of any person subject to the statutory disqualifications enumerated in the section. The Commission could take this action after notice but without giving the affected party a hearing. The Commission could revoke a registration on the basis of a finding that the registrant is subject to a statutory disqualification, but, prior to revocation, must give the registrant the opportunity for a hearing and submit evidence forming a basis for the finding that the registrant is subject to a statutory disqualification.

In general, the enumerated disqualifications could serve as a statutory bar to registration or could result in suspension or conditional or restricted registration include (1) a currently effective suspension or revocation of registration; (2) a Commission refusal (after opportunity for a hearing (to register the applicant within the past 5 years; (3) a temporary or permanent court injunction involving acting in any capacity requiring registration under the Commodity Exchange Act or securities acts; (4) a felony conviction within the last 10 years that involved a security or any matter subject to regulation under the Commodity Exchange Act; (5) a finding by a court or governmental body of a violation, within the last 10 years, of the Act, Federal securities laws, or similar statutes, where the violation involved theft, fraud, misappropriation of assets, gambling, or the willful aiding or abetting of these violations; (6) an outstanding Commission order imposing certain sanctions, such as denial of trading privileges on any contract market; (7) a willful material misstatement or omission in the registration application as to whether the applicant is subject to any of the foregoing statutory d squalifications; and (8) as to the registration of a partnership or corporate entity, a finding that the partnership or corporate entity has a principal who is subject to a statutory disqualification.

Generally, these disqualifications are based upon a prior finding or order made or entered by the Commission, a court, or another governmental body. As a result, whether or not a person is subject to such a disqualification should, in most instances, be readily ascertainable by checking officially maintained Government records.

The second portion of the system of statutory disqualifications added to current law by the Committee bill takes the form of an amendment to section 8a(3) of the Act. In general, under this amendment the Commission will be authorized to refuse to register or to register conditionally any person if, after opportunity for a hearing, the Commission finds, among other things, that the person (1) has been found by the Commission or a court to have violated any provision of the Act or to have aided or abetted such violation; (2) has been found by a court or governmental body to have violated any provision of the securities acts or related State or foreign acts or to have aided or abetted such violation; (3) has failed reasonably to supervise another person under his direction with a view toward preventing violations of the Act, the securities acts or related State or foreign acts; (4) has been convicted of a felony not involving futures or securities laws within the last 10 years or of a misdemeanor within the last 10 years, involving any matter regulated under the Commodity Exchange Act or the securities acts; (5) does not meet the minimum

financial requirements established by the Commission for registration; or (6) is subject to an outstanding order denying or suspending the person's membership in a contract market or other self-regulatory organization, expelling such person from a contract market or other self-regulatory organization, or barring such person from associating with a member of a contract market or other self-regulatory organization. These offenses, which are generally less serious or further removed from the conduct regulated under the Act than the offenses specified in amended section 8a(2), or which require fact finding or for which it may be appropriate for the Commission to consider mitigating or extenuating circumstances or evidence of rehabilitation (such as a misdemeanor conviction), would be grounds for a finding of unfitness only after an opportunity for hearing before Commission.

The Committee believes these provisions will streamline the registration process. The temporary licensing provision will permit applicants who appear qualified to begin work while their fitness checks are conducted. These amendments give the Commission greater flexibility in dealing with factual situations in which neither a denial nor full registration is appropriate. The Committee also desires to assist the National Futures Association in its efforts to assume the registration functions by authorizing it to collect fingerprints and submit them to the Federal Bureau of Investigation for identification and screening.

The Committee also believes that significant savings can be made as a result of the delegation of the Commission's registration functions to the National Futures Association. The system of statutory disqualifications will give guidance to the National Futures Association with regard to registration policy. The Committee contemplates that the Commission will also issue any necessary regulations in this area to give the National Futures Association any further guidance that it may need.

The statutory disqualification sections will put both applicants and registrants on notice as to the most significant fitness standards applicable to registration under the Act. In effect, these provisions spell out some of the "good cause" exceptions existent in current law, under which the Commission may refuse to register an applicant or may revoke an existing registration. The Committee is hopeful that these provisions will reduce the amount of time and resources that the Commission, as well as applicants and registrants, currently devote to preparing and litigating registration cases.

The Commision notes that the Commission has been given wide discretion in the use of the statutory disqualifications contained in the amendments to sections 8a(2) and 8a(3) of the Act. In particular, the Commission has wide discretion to suspend a registrant or to place restrictions on the registrant's activity without giving the registrant a hearing in the matter.

The Committee expects that the Commission will exercise its discretion judiciously and not use its powers to suspend or restrict a registration, without a hearing, as *de facto* revocation of that registration. The Committee will carefully monitor the operation of these procedures.

Registration of associated persons of commodity trading advisors and commodity pool operators

Section 4m of the Act requires commodity pool operators and most categories of commodity trading advisors to register with the Commission.

Section 8a(1) of the Act authorizes the Commission to establish certain requirements for Commission registrants, including commodity pool operators and commodity trading advisors. In addition, section 4k of the Act requires the registration of all partners, officers, or employees of a futures commission merchant who solicit or accept customers' orders or who supervise any person so engaged. These provisions further make it unlawful for a futures commission merchant to permit a person to be associated with it if the futures commission merchant knew or should have known that the person is not registered with the Commission.

The Commission proposed that existing law requiring the registration of persons associated with futures commission merchants be extended to include personnel associated with commodity pool operators and commodity trading advisors. The Commission testified that its proposal would create a parity of registration requirements among all persons who handle customers' funds or who influence or advise customers concerning the investment of their funds. The Commission further stated that such registration authority is needed to assure adequate supervision of and appropriate fitness standards for these commodity professionals.

Specifically, the Commission proposed that partners, officers, and employees and agents of commodity pool operators who solicit the purchase of pool interests, or who supervise such persons, be required to register as associated persons of the commodity pool operator. Similarly, the Commission proposed that partners, officers, and employees and agents of commodity trading advisors who solicit discretionary accounts, or who supervise such persons, be required to register as associated persons of commodity trading advisors. The Commission also proposed that it be unlawful for a commodity pool operator or a commodity trading advisor to permit a person to remain associated with the pool operator or trading advisor if the pool operator or trading advisor knew or should have known that the person was not registered with the Commission. The Commission also proposed extending the antifraud provisions of section 4o, which are currently applicable to commodity pool operators and commodity trading advisors, to their associated persons.

In addition to considering the Commission's proposals concerning the registration of certain persons employed by commodity trading advisors and commodity pool operators, the Committee also considered proposals contained in S. 2210, introduced by Senator Roth and others. S. 2210 proposed that all nonclerical employees and consultants of commodity trading advisors and commodity pool operators be registered as associated persons of these entities. S. 2210 also proposed that the antifraud provisions applicable to commodity trading advisors and commodity pool operators be extended to the associated persons of these entities.

After carefully considering these issues, the Committee adopted proposals extending the commodity trading advisor and commodity

pool operator registration and antifraud provisions to partners, officers, employees, agents and consultants associated with the commodity trading advisors and commodity pool operators. The Committee determined that consultants of commodity trading advisors and commodity pool operators should be subject to the registration and antifraud provisions of the Act when these consultants solicit customers' discretionary accounts or the purchase of pool interests or supervise persons who solicit such accounts or the purchase of such interests.

The Committee believes that the registration of associated persons of commodity pool operators and commodity trading advisors is necessary to ensure that such persons are qualified to offer pool participations and investment advice to potential participants and clients and are adequately supervised. Such a registration requirement will permit the Commission to conduct fitness checks through the FBI, SEC and other sources to uncover past misconduct such as criminal convictions, to proceed more effectively against individuals associated with registered entities who violate the Act, and to subject these persons to reparations claims. The need to screen these categories of commodity professionals has become more urgent because of a dramatic increase in the number of commodity pool operators and commodity trading advisors, and a concomitant increase in the number of customers and the amount of funds under management by them. For example, the number of commodity pool operators registered with the Commission rose from 494 at the end of fiscal year 1978 to 882 at the end of fiscal year 1981, an increase of more than 75 percent. This change will make the registration program more consistent because it will require persons who essentially function in the same capacity as persons associated with futures commission merchants to register as associated persons.

Responsibility of registrants for their associated persons

The Commission proposed a provision prohibiting a registrant from having associated with it any person whom the registrant knew or should have known was subject to a registration disqualification enumerated in the amendments to section 8a(2) of the Act. This provision was amended, however, so that it would not be applicable if the registrant notified the Commission of the disqualification and the Commission determined that the person subject to the disqualification should be registered or temporarily licensed.

The Committee notes that a violation of this provision could lead to the restriction, suspension, or revocation of the violator's registration, under the provisions adopted in the amendments to section 8a(3) of the Act. In light of this, the Committee expects the Commission to issue regulations specifying how compliance with this provision shall be achieved.

Extension of authority regarding fitness standards and proficiency examinations

Section 4p of the Act authorizes the Commission to establish fitness standards for futures commission merchants, floor brokers, and associated persons of futures commission merchants and, in connection

therewith, to adopt a written proficiency examination to be administered to applicants seeking registration. The Commission proposed that the provisions of section 4p of the Act be extended to all persons registered with the Commission. Similar proposals were contained in S. 2210, introduced by Senator Roth and others, and were also suggested by the General Accounting Office.

The Committee bill extends the provisions of section 4p of the Act to all persons registered with the Commission. The Committee envisions that any fitness standards for registrants will be developed in cooperation with the National Futures Association. Administration of proficiency examinations is an area the Committee believes is appropriate for delegation to the National Futures Association, with oversight by the Commission.

Registration of agents of futures commission merchants as introducing brokers

Sections 4f and 4k of the Act acknowledge that futures commission merchants may do business through persons known as "agents," but the term "agent" is not defined. Section 4f(1) of the Act requires applicants for registration as futures commission merchants to include on their applications the names and addresses of all "agents" engaged in soliciting or accepting customers' orders, but do not require registration of the "agents" themselves. These provisions, however, require the registration of any person associated with any "agent" of a futures commission merchant as a partner, officer or as an employee who solicits or accepts customers' orders or who supervises persons so engaged.

During the subcommittee hearings, the Commission, industry representatives, and the Committee on Commodities Regulation of the American Bar Association recommended changes in the present statutory treatment of "agents" of futures commission merchants. The Commission testified that, in recent years, a significant increase in the number of designated "agents" had taken place, with their numbers approaching 1,000 as of March 1982. The Commission also testified that futures commission merchants using "agents" have often disavowed any responsibility for violations of the Act by these "agents".

The Commission proposed that each "agent" of a futures commission merchant be required to register as an associated person of that futures commission merchant. The Commission contended that this approach would be preferable to the creation of a separate registration category for these "agents." The Commission advised the Committee that most futures commission merchants conduct their sales efforts through branch offices, the sales staffs of which are registered as associated persons. A few futures commission merchants, however, make extensive use of "agents" in lieu of hiring their own sales force. The Commission further testified that recent data indicate that approximately 10 percent of the futures commission merchants registered with the Commission have business relations with 80 percent of the "agents" identified by the Commission. In conclusion, the Commission testified that its proposal would create a parity of responsibility between futures commission merchants using associated person at branch offices and those using "agents" as sales representatives.

In contrast, representatives of the industry recommended that those persons currently classified as "agents" of futures commission merchants be registered as members of a new registration category, identified as the "introducing broker" category. Industry representatives testified that these "agents" merely use the services of the futures commission merchant for clearing, recordkeeping, and safeguarding of funds, and that such "agents" are not closely tied to the futures commission merchant and often move from one to another. As a result, the futures commission merchant does not and cannot effectively control the activities of the agent."

The Committee on Commodities Regulation of the American Bar Association recommended that those businesses that are identified as "agents" of futures commission merchants be required to stand on their own and be directly responsible for meeting their obligations. In light of this, the Bar Committee proposed establishment of the "introducing broker" category of registrant. This category would include any person engaged in soliciting or accepting customer orders, but who does not retain customers' margin funds. The proposal would authorize the Commission to establish a comprehensive regulatory scheme for this new category of registrants.

The Committee agreed that the present status of "agents" of futures commission merchants should be changed. After deliberation, the Committee decided to adopt the regulatory scheme recommended by the commodities industry and the Committee on Commodities Regulation of the American Bar Association. The Committee bill thus amends section 2(a)(1) of the Act to define the term "introducing broker" to mean any person soliciting or accepting customers' orders for futures contracts, but who does not retain customers' margin funds. Under the Committee bill, the Commission is authorized to develop a regulatory structure for introducing brokers modeled after that presently in effect for futures commission merchants. In this connection, the Committee bill amends section 4f of the Act to prohibit registration of introducing brokers who do not meet the minimum financial requirements that the Commission may establish to guarantee accountability and responsible conduct of such persons. The Committee understands that introducing brokers will be permitted to become members of a registered futures association.

The Committee adopted the "introducing broker" provision because a significant number of the "agents" of futures commission merchants are, in fact, independent business entities that utilize the services of futures commission merchants for clearing and recordkeeping functions and for the safeguarding of investors' funds. In such cases, it is difficult to envision how the futures commission merchant could exert the kind of control mandated in the Commission's proposal.

In light of these facts, the Committee felt it would be inappropriate to (1) require these independent business entities to become branch offices of the futures commission merchants through which their trades are cleared or (2) to impose vicarious liability on a futures commission merchant for the actions of an independent entity. The Committee notes that there are a number of existing legal theories that the Commission may employ to hold a futures commission merchant liable for the acts of an "introducing broker", if, in fact, the "introducing broker" is not independent but is operating as a *de facto* branch office of the futures commission merchant.

Judicial Review of the Commission's Emergency Powers

Section 8a(9) of the current Act authorizes the Commission, when it has reason to believe that an emergency exists, to direct a contract market to take such action as the Commission considers necessary to maintain or restore orderly trading in or liquidation of any futures contract.

The term "emergency" is defined in the Act to include any threatened or actual market manipulations or corners, any Government action affecting a commodity, or any other major market disturbance that prevents the market from accurately reflecting the forces of supply and demand.

The Commission has used its emergency powers under section 8a(9) on four occasions since it was created in 1975. These occasions involved the 1976 Maine potato futures contract traded on the New York Mercantile Exchange, the December 1977 coffee "C" futures contract traded on the New York Coffee and Sugar Exchange, the March 1979 wheat futures contract traded on the Chicago Board of Trade, and wheat, corn, oats, soybean oil, and soybean meal futures contracts traded on the Chicago Board of Trade, the MidAmerica Commodity Exchange, the Kansas City Board of Trade, and the Minneapolis Grain Exchange in January 1980.

In the emergency involving the Chicago Board of Trade's March 1979 wheat contract, the exchange obtained a preliminary injunction in Federal district court against the Commission's emergency order. The Commission appealed this decision to the Court of Appeals for the Seventh Circuit, which vacated the lower court's decision (*Board of Trade of the City of Chicago* v. *CFTC*, 605 F.2d 1016 (7th Cir. 1979), *cert. denied*, 446 U.S. 928 (1980).) The appeals court found that the Commission's exercise of its emergency powers was within the sphere of agency discretion and, as such, was not reviewable in terms of the merits of the exercise of these powers.

During the hearings before the Subcommittee on Agricultural Research and General Legislation, representatives of the commodities exchanges testified that judicial review of governmental action is essential to ensure responsible governmental conduct. The exchanges therefore proposed amendments to current section 8a(9) of the Act that would make the Commission's exercise of its emergency powers reviewable in Federal district court. In particular, industry representatives recommended judicial review of (1) whether the Commission had a legitimate reason to believe that an emergency existed and (2) whether the Commission's action was necessary "to maintain or restore orderly trading in, or liquidation of, any futures contract."

The Commission did not recommend any changes in the current statutory provisions concerning its emergency powers during the reauthorization hearings. In testimony before the subcommittee, the Commission stated that if judicial review of the merits of Commission emergency determinations were permitted, the Commission could be hampered significantly in responding to market situations that require immediate remedial measures—the concern that prompted Congress in 1974 to vest the Commission with emergency authority under section 8a(9) of the Act. The Commission further testified that, in certain situations, it has not been able to depend upon the exchanges taking

emergency action and has had to respond quickly to market crises on its own. In situations such as those, the Commission stated that, if it had to prepare witnesses, court pleadings, and other documents to fend off a challenge to the exercise of its emergency powers, it might have to delay implementation of its emergency action or act prematurely so as to preclude becoming mired in litigation during the crisis.

The Committee believes that the Commission's exercise of its emergency powers should be subject to review in the court system, as are most Government actions. However, the Committee is also concerned that, unless the scope and procedures for such judicial review are circumscribed, the intent of Congress in adopting current section 8a(9) of the Act could be thwarted. For these reasons, the Committee provided for limited judicial review of the Commission's exercise of its emergency powers in an amendment to section 8a(9).

The Committee bill provides that review of the exercise of these powers shall take place only in an appropriate United States court of appeals and that the court may not enter a temporary restraining order, preliminary or permanent injunction, or order of mandamus until a hearing has been held before a panel of judges and all parties to the dispute have had an opportunity to argue their positions. In light of the Committee's concern that judicial review of the exercise of these emergency powers not affect the timing and nature of their use, the Committee further provided that such judicial review would be based upon the information before the Commission at the time the decision to take action was made. (This information is normally set forth in the Commission's emergency order.) The Committee also provided that any court-ordered temporary restraining order, preliminary or permanent injunction, or order of mandamus affecting the Commission's exercise of its emergency powers would have to be based on a determination that the Commission's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

In view of the importance of this issue to the proper functioning of the futures markets, the Committee intends to carefully monitor this provision to make sure it does not thwart the Commission's ability to act in an emergency.

Speculative Trading and Position Limits

The Committee bill includes several changes to section 4a of the Act with speculative trading and position limits.

Section 4a currently states that excessive speculation in futures contracts that causes sudden or unreasonable fluctuations or unwarranted changes in the prices of commodities is an undue burden on interstate commerce. To diminish or eliminate such a burden, the Commission is authorized, after notice and opportunity for a hearing, to fix limits (by order) on the amount of futures trading that may be done by a person or a group of persons trading in concert or the number of futures positions that may be held by a person or a group of persons trading in concert.

At present, there are Commission-established speculative position limits for several agricultural futures contracts, principally in the

area of grains and soybeans. Many exchanges have also established their own speculative position limits for the contracts that they trade.

During 1981, the Commission promulgated a final rule requiring exchanges, by February 14, 1982, to submit speculative position limit proposals for Commission approval for all futures contracts traded as of that date. After that date, each exchange would be required to propose speculative position limits for any other contracts (futures or options) that it intended to list for trading. The exchanges were not required to submit position limit proposals for futures contracts that were already subject to Commission or exchange-imposed speculative position limits. The Commission staff is currently reviewing the exchanges' speculative position limit proposals.

During the reauthorization hearings, the Commission proposed amendments to section 4a that would confirm the exchanges' authority to set speculative limits for futures and option contracts and the Commission's authortiy to set speculative limits by rulemaking. In addition, the Commission recommended that exchange-established limits be identical to Commission-established limits, unless the Commission approves a variation. Finally, the Commission proposed that violations of exchange-established speculative trading or position limits on futures or option contracts be made violations of the Act, if such limits have been approved by the Commission. This latter provision was designed to lend credibility to the exchanges' efforts to enforce their speculative limits and to demonstrate the importance which the Commission attaches to these limits.

Representatives of the futures industry also proposed several changes to section 4a. These changes included shifting to the contract markets the initial responsibility for establishing whether speculative trading or position limits in any futures or option market are needed and, if so, establishing the level of such limits. Industry representatives recommended that the Commission be authorized to require a contract market to review and revise its speculative limit levels only after the Commission has made certain specified findings after the conclusion of a hearing on the record. Finally, industry representatives recommended deletion of certain language in section 4a dealing with the burden which excessive speculation places on interstate commerce.

The Committee believes that the Commission's authority to set speculative position and trading limits on futures contracts is important to ensure orderly trading and to prevent market excesses. The Committee bill makes several changes to clarify and strengthen the Commission's authority in this area. The Committee bill amends section 4a to provide express authority for the Commission to involve exchanges in this process by providing for express recognition of the exchanges' authority to set limits for futures and option contracts. The bill also provides that a violation of exchange-established speculative limits is a violation of the Act, if such limits have been approved by the Commission. While exchange-established limits may not be higher than those established by the Commission, the Committee bill permits exchanges to set limits lower than those established by the Commission. This change will enable the exchanges to better monitor trading and position concentrations in their markets.

The Committee also decided to retain the present legislative findings of section 4a concerning the burden which excess speculation places on interstate commerce. The Committee believes that speculative limits, in addition to their role in preventing manipulations, corners, or squeezes, are also important regulatory tools for preventing unreasonable fluctuations or unwarranted changes in commodity prices that may arise even in the absence of manipulation.

While the Committee noted the importance of encouraging all interested persons to make their views known with respect to speculative limit levels, the Committee believes that the present provisions of section 4a are sufficient to achieve this outcome. The Committee thus decided to retain the current provisions governing the establishment of speculative position limits; *i.e.*, in setting these limits, the Commission must provide notice and opportunity for hearing, but not a hearing on the record. Nevertheless, the Committee contemplates that, before establishing speculative limits, the Commission will consider objective economic data relevant to the need for restraints on the markets. The Committee expects the Commission to afford interested parties, including traders, producers, consumers, and contract markets, opportunity to address the speculative limits proposals under consideration by the Commission.

Finally, the Committee bill will amend section 4a to provide that the Act's criminal penalties in section 9(c) are applicable to violations of exchange-established speculative limits only if the violations are committed in furtherance of an attempt to manipulate, corner, or squeeze a market. The Committee believes that criminal penalties for violation of these limits should apply only to conduct that is intentional and that is directed at obtaining illegal gain by attempting to affect market prices.

The Offer and Sale of Foreign Futures Contracts in the United States

During recent years, futures markets have become increasingly internationalized, with growing participation by U.S. residents in foreign markets and increased participation by residents of other countries in U.S. markets. Since the Commission has adequate statutory authority to regulate foreign participants in U.S. futures markets, no changes were made in the present law respecting their activity in U.S. markets. However, for the reasons discussed below, the Committee made certain changes in current law to reaffirm and clarify the Commission's authority over the offer and sale of foreign futures within the United States, its territories, and possessions.

Under section 2(a)(1) of the Act, the Commission has exclusive jurisdiction over all agreements and transactions involving futures contracts traded or executed on any board of trade, exchange, or market, regardless of whether the board of trade, exchange, or market has been designated as a contract market under section 5 of the Act. Under the exclusive jurisdiction authority and the general rulemaking authority in section 8a(5) of the Act, the Commission has promulgated a rule prohibiting fraud in the offer and sale of foreign futures contracts within the United States. With the growth of foreign futures

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markets abroad and the possibility that illicit commodity instruments may be offered under the guise of legitimate foreign futures contracts, additional congressional action was deemed necessary.

In order to provide adequate protection for American residents who are solicited to trade foreign futures contracts by vendors within the United States, the Committee bill adds a new section 4(b) to the Act reaffirming the Commission's authority to adopt rules and regulations prohibiting fraud in the offer and sale of foreign futures contracts in the United States. The new provision also provides explicit authority for the Commission to promulgate rules and regulations requiring minimum financial standards, the disclosure of risk, reporting, the keeping of books and records, the safeguarding of customer funds, and the registration of those who offer and sell foreign futures contracts from domestic locations.

Under the Committee bill, the Commission is authorized to develop different requirements for vendors depending upon the particular board of trade or market on which the foreign futures contracts are made, in particular taking into account those foreign futures contracts that have not traditionally posed a danger to U.S. residents. However, the Commission's authority to adopt rules and regulations under this section does not include authority to approve the contracts, contract terms, rules, or actions of a foreign board of trade, market, or clearinghouse.

The Commission's authority to adopt rules and regulations under this provision is not intended to impair the contractual duties, obligations, or rights arising from the rules or practices of any foreign board of trade, market, or clearinghouse or the principals of any such entities. In addition, the rules and regulations developed under this provision are not intended to place the solicitation or acceptance of orders in the United States for bona fide foreign futures contracts at a comparative disadvantage with similar solicitation or acceptance of orders for domestic futures contracts. For example, rules which require the segregation of all or part of customers' funds in the United States would not be consistent with the intent of this provision when there is adequate evidence that such funds have been transferred to a bona fide foreign market, clearinghouse, or market principal and are adequately safeguarded for the protection of U.S. residents. Finally, the Committee intends that the Commission, in developing rules or regulations under section 4(b), take into account the customs and practices of foreign boards of trade or markets and recognize that differences may exist between the practices of foreign boards of trade and their U.S. counterparts.

In addition to including a new section 4(b) that clarifies the types of regulations and rules that the Commission may promulgate with respect to the offer and sale of foreign futures from domestic locations, the Committee bill also makes it clear that the Commission may permit the application of other Federal and State laws, in addition to the Act, to transactions conducted on or subject to the rules of a board of trade, exchange, or market located outside the United States. This so-called "open season" provision is discussed in another section of this report. The Committee notes that the interaction between overseas markets and United States customers is primarily a Federal function. The Committee intends that this provision authorize the Com-

mission to permit the application of such other Federal or State laws, as well as regulations issued under such laws, to the offer and sale in the United States of futures contracts originating on foreign boards of trade, exchanges, or markets, with particular reference to situations involving the illicit offer and sale of such contracts to U.S. residents.

Controlling Person

The Committee adopted a provision that is designed to provide greater accountability on the part of persons within an organization who control the practices that give rise to violations of the Act. Frequently these are individuals within a company who know or should have known of the particular misconduct but who seek to shield themselves from accountability behind the corporate veil.

To rectify this situation, the Commission proposed the so-called "controlling person" provision under which any person who directly or indirectly controls another person who has violated any provision of the Act or regulations would also be liable for the violation, unless the controlling person could show that he did not know or, in the exercise of reasonable care, did not have reason to know the facts constituting the violation.

In support of this provision, the Commission stated that the Act, as written, holds corporate or partnership entities liable for the acts of the entities' employees or agents, but that the converse is not always true with respect to those persons who control the entities, *i.e.*, those controlling persons are not always held responsible for the misdeeds of the corporate or partnership entities. The Commission stated that it is difficult to reach behind the corporate or partnership entity and obtain sanctions against those persons who instigate and are responsible for the violations with which the entity is charged. Consequently, these persons often establish a new corporate entity and instigate additional violations of the Act through the new entity. The Commission stated that this provision would strengthen its ability to impose sanctions against individuals who are, in essence, the alter egos of business entities subject to statutory obligations under the Act.

After much debate on this issue, the Committee adopted a provision patterned after the "controlling person" provision found in the Securities Exchange Act of 1934, but requiring that the Commission bear the burden of proving wrongdoing on the part of the controlling person. Under the Committee provision, any person who directly or indirectly controls any other person who has violated the Act or regulations may be held liable for that violation in any action brought by the Commission to the same extent as the controlled person, provided that the controlling person did not act in good faith and directly or indirectly induced the acts constituting the violations.

To establish liability under this provision and thus hold the controlling person liable for the misdeeds of the person controlled, the Commission must show that (1) the controlled person violated the Act or regulations; (2) the controlling person had direct or indirect control of the person committing the violation; (3) the controlling person did not discharge his responsibility in good faith; and (4) the controlling person directly or indirectly induced the act that constitutes the violation.

Reparations

The Committee bill amends section 14 of the Act to correct specific problems that the Commission has encountered in administering the reparations program and to encourage use of other forums by claimants seeking relief for violations of the Act. These amendments will bolster the credibility of the reparations program, which has suffered due to delays in the handling of claims and the assessment of awards which are not collectable. The use of other forums will also reduce the demand for claims adjudication in the reparations program.

During the 1978 reauthorization, the Commission sought and obtained certain amendments to the Act which were designed to include unregistered persons in the class of persons subject to the Commission's reparations procedures. Over the course of the past 4 years, however, the Commission has encountered several unanticipated problems stemming from the inclusion of these unregistered persons. For example, claims must now be heard by the Commission even though the Commission has had no prior knowledge of the existence of the unregistered defendant firms and individuals and has had no opportunity to regulate or monitor their business practices. Additionally, unregistered firms and individuals often file in bankruptcy, are destitute, or have disappeared by the time a claim is asserted, resulting in the assessment of reparations awards which are not collectable.

In these circumstances, the reparations process works as a disservice to those who have already been harmed by holding out the promise of recovery which, as a practical matter, cannot be had. These types of uncollectable claims serve to delay the entire reparations process, thereby deferring the completion of cases where recovery is possible. Accordingly, the Committee bill repeals the current law provisions providing for reparations jurisdiction over persons not registered with the Commission. Of course, those who aid or abet the registrant's violation can be joined in the reparations proceeding.

The Committee bill also deletes several of the cumbersome procedural requirements contained in current law and gives the Commission broad discretion to fashion procedures through rulemaking to administer the reparations program in an efficient and expeditious manner. Under the provisions of the bill, the Commission may adopt procedures which differ from those ordinarily applicable to agency action under the Administrative Procedures Act. These provisions, however, do not absolve the Commission from complying with the parties' due process and other rights under the United States Constitution. These provisions will enable the Commission to fashion a program through rulemaking that will not promise more than it can deliver, but which will operate using efficient and fair procedures.

The Committee bill also makes other changes for purposes of encouraging prompt recoveries. For example, current law provides that a hearing is not required in reparations cases when the damages claimed do not exceed $5,000. This $5,000 limit was raised from $2,500 in 1978 to increase the number of cases that could be resolved through the submission of papers alone. In order to increase the Commission's flexibility in developing procedures for the efficient disposition of claims, the Committee bill eliminates this monetary ceiling. Thus, the Commission could decide cases on documentary evidence alone, with-

out regard to the amount of damages claimed, or it could raise the amounts in controversy necessary before a hearing need be held.

Since the reparations program seeks to decide the entire controversy surrounding each claim, including counterclaims arising out of the same set of facts, the Committee bill creates a sanction that would operate against a plaintiff who fails to honor a counterclaim award made in favor of a defendant. In such a case, the plaintiff would automatically be prohibited from trading in the futures markets until the award is paid. This provision is designed to ensure the integrity of the reparations program and the Commission's orders and to make the system more equitable for all participants.

Repeal of the Prohibition on the Trading of Options on Agricultural Commodities

I.

The Committee bill repeals section 4c(a)(B) which prohibits the trading of options on commodities specifically enumerated in the Act prior to 1974, which include most agricultural commodities. Provisions in the bill permit the Commission to approve and regulate the trading of these options under the same conditions as apply to the trading of options on other commodities.

Current law permits nonagricultural commodity options to be traded if certain conditions are met. While there are no options contracts traded on United States commodity exchanges at the present time, the Commission recently approved regulations and is currently reviewing applications to trade options on a limited number of nonagricultural commodities on a pilot basis.

II.

An option is a contract that gives the purchaser the right, but not the obligation, to purchase or sell the commodity on which the contract is based, or a futures contract based on that commodity, at a set price known as the option strike price, on or before a set date in the future. The purchaser pays a purchase price, called a premium, for the option contract and has no further financial obligation with respect to it. A contract conveying the right to purchase is known as a "call" option. A contract conveying the right to sell is known as a "put" option.

III.

Agricultural options, if also authorized for trading by the Commission, could become a beneficial marketing tool for farmers and the agricultural industry. These options could provide farmers and processors with a method of price protection that differs in significant respects from methods presently available. With options, as with futures contracts, farmers can insure against the effects of unfavorable commodity price movements. With futures contracts, the farmer must give up the opportunity to benefit from favorable price movements in order to protect himself from unfavorable movements; however,

futures contracts do not require the payment of a fee such as the option premium.

With a put (sell) option, a farmer may exercise the option if the market price falls below the option strike price and be assured of receiving the strike price. If the market price rises above the option strike price, however, the option contract can be abandoned and the farmer can sell his produce at the higher market price. Similarly, a processor who purchases a call (buy) option limits his risk in case the price of his raw material rises, but may still take advantage of price declines, should they occur. In this manner, the holder of an option limits his risk without foregoing his opportunity for profit. In addition, since the option purchaser's financial obligation is limited to the option premium, a farmer buying a put option would be able to identify in advance and limit his marketing costs.

IV.

Agriculture has become increasingly oriented to a world market. As a consequence, U.S. commodity prices are more responsive than ever before to global weather conditions and developments in political and monetary policy. It is thus likely that U.S. commodity prices will become more volatile, because of the uncertainty stemming from these external factors. Consequently, farmers need additional marketing tools which help them to manage the risks inherent in downward price fluctuations, while leaving them free to take advantage of higher prices as they occur.

V.

The statutory ban on the trading of agricultural options was enacted in 1936, largely as a result of abuses in options trading. Circumstances under which options would be traded today, however, are markedly different from those which existed in the 1930's. Farmers themselves are much more sophisticated and have a much more extensive network of communications available to them. The futures exchanges have developed extensive compliance programs designed to detect and prevent trading abuses. The Commission itself is a viable regulatory force that has shown itself willing and able to oversee and regulate commodity trading.

In light of the foregoing, it appears highly unlikely that the abuses which clouded the trading of agricultural options in the 1930's could recur in the 1980's. The Committee is sensitive to the harm that could be caused by options trading abuses, however, and will carefully study and monitor any agricultural options trading program which may be established.

The Committee believes that the trading of agricultural options should be studied further before the Commission authorizes trading in these options on the part of the public. The Committee has been advised that other governmental and private groups are already studying or are prepared to study this issue and hopes that this work will be considered by the Commission. At a minimum, trading in these options should not begin until a study of option pricing and grantor eligibility is completed, the present options pilot program has been

evaluated and the Commission is confident in its ability to regulate such trading.

This does not mean, however, that the present options pilot program must be completed before it is evaluated. Indeed, after an initial evaluation of the projected options pilot program, the Commission may wish to expand the program to include options on agricultural commodities. Any such program involving agricultural options would be initiated under the statutory provisions applicable to the trading of options contracts generally.

Leverage Transactions

1.

The Committee bill continues existing law with regard to the regulation of leverage transactions.

The offer and sale of leverage contracts are recognized in section 19 of the Act, even though leverage transactions are conducted between the leverage dealer and its customer on an off-exchange basis.

Section 19(a) prohibits leverage transactions in any commodity specifically enumerated in section 2(a) of the Act (*i.e.*, agricultural commodities regulated under the Act before enactment of the Commodity Futures Trading Commission Act of 1974. Section 19(b) prohibits leverage transactions in gold or silver bullion or bulk coins contrary to any rule or regulation of the Commission designed to assure the financial solvency of the transactions or to prevent manipulation or fraud. Under section 19(c), the Commission may prohibit or regulate any leverage transactions in any commodities other than gold, silver, or those commodities specifically enumerated in section 2(a) of the Act. Section 19(d) authorizes the Commission, if it determines that any transaction authorized under sections 19(b) or 19(c) are contracts for future delivery, to regulate such transactions in accordance with the provisions of the Act applicable to futures contracts.

At present, there are three Commission regulations that deal with leverage transactions—a general antifraud rule and two moratoria precluding the entry of new leverage firms or the offering of new leverage contracts.

During the reauthorization hearings, several witnesses, including the Commission Chairman, representatives of three of the four existing leverage firms, and representatives of State securities administrators' and states attorneys' offices, recommended changes in the present statutory authority dealing with leverage transactions. In addition, the Committee had before it S. 2210, introduced by Senator Roth and others, which contains several provisions dealing with leverage transactions.

The Commission proposed statutory ratification and extension of the existing regulatory moratoria until September 30, 1984. During this period, the Commission would conduct a study of the leverage industry and submit the results of the study and the Commission's recommendations for the future regulation of leverage transactions to the congressional oversight committees. Both the North American Securities Administrators Association (NASAA) and the Roth bill proposed a

statutory change to permit the States to require registration of persons soliciting or accepting orders for leverage transactions, insofar as the exercise of such jurisdiction did not conflict with the Act or the regulations issued thereunder. Both also proposed that the States be permitted to proceed against leverage dealers and their employees on the basis of any alleged violation of State securities or commodities antifraud statutes.

The three leverage merchants testifying at the subcommittee hearings proposed a repeal of section 19(d) of the Act and opposed the study of the industry proposed by the Commission. They recommended that the Commission be directed to regulate the leverage industry and to lift the moratoria which preclude both the expansion of existing firms into leverage contracts based on other commodities and the entry of new firms into the leverage business.

II.

The Committee rejected all of these proposals and decided to continue existing law. The Committee is seriously concerned, however, over the failure of the Commission to regulate leverage transactions after twice being directed to do so. The Conference Report for the Commission's 1978 reauthorization stated, "It is the intent of the conferees that the Commission act expeditiously upon enactment of the conference substitute to regulate . . ." leverage transactions in gold and silver. (S. Rept. No. 95-1239, p. 28.) The Committee repeats this admonition and reemphasizes its intention for the Commission to regulate leverage transactions as expeditiously as possible. No further study is necessary.

The Committee recognizes the increasing demands upon the Commission's resources and accordingly does not object to the current regulatory moratoria maintaining the *status quo* in the industry until such time as a comprehensive regulatory system is in place and the Commission is capable of regulating an expanded leverage industry. The Committee chose not to ratify and extend these moratoria in the bill itself, however, since they are inherently anticompetitive and thus contrary to the fundamental objectives of economic competition and the free marketplace. The Committee intends for the Commission to terminate these moratoria as quickly as the Commission determines it is prudent to do so.

The Committee did not adopt the S. 2210 and NASAA proposals for the same reasons Congress placed exclusive jurisdiction over leverage transactions under the Commission in 1974. In order to avoid regulatory inconsistencies and unnecessary duplication of both government and industry effort, the Committee intends for the current exclusive jurisdiction of the Commission over leverage transactions to continue. State officials have enforcement authority to ensure that the public is adequately protected from unscrupulous operators under other sections of the Commodity Exchange Act.

Finally, the Committee believes it is not necesary to repeal section (19)d of the Act in order to ensure regulation. The Committee intends for the Commission to regulate leverage transactions, not to ban them. Again the Committee restates and clarifies the intention of the 1978 conference committee: the authority of section 19(d) is not to be

misconstrued and exercised as a substitute for the regulation of leverage transactions. Rather, the section is intended solely to enable the Commission to protect the public from attempts to disguise off-exchange trading in futures contracts as the purchase of commodities through otherwise lawful leverage transactions.

Committee Consideration

Hearings

I.

On February 26, 1982, the Subcommittee on Agricultural Research and General Legislation initiated the hearings process for the reauthorization of the Commodity Futures Trading Commission.

In his opening statement, Senator Richard Lugar, Chairman of the subcommittee, enumerated a number of areas for the subcommittee to consider.

"As we consider reauthorization legislation for the CFTC, we must be mindful of the growth of the industry it was created to regulate. A healthy and vigorous futures industry depends ultimately upon a strong measure of public confidence in its activities. I believe that everyone, including futures industry representatives, agrees that effective regulation is necessary to protect the public, commercial hedgers, and the industry itself from unscrupulous persons. This industry itself has under taken significant efforts at self-regulation; including the development of an industry-wide self-regulatory organization." Senator Lugar also pointed out that questions have been raised concerning the scope and effectiveness of the CFTS's monitoring and enforcement procedures as well as the question of who should pay for the SFTC's regulatory activities.

Senator David Boren, ranking minority member of the subcommittee, also listed areas of concern: What role futures trading plays in our commercial and financial economies; the nature and effectiveness of the self-regulatory mechanisms in the futures industry; and the type and extent of Federal regulation that is needed.

Senator Roger Jepsen expressed concern about the CFTC's image as a regulator of the futures trading industry. Senator Jepsen also posed the question of whether States should become more involved in the enforcement of commodity laws.

Senator Bob Dole posed questions about the CFTC's reparations procedures and the impact of stock index futures trading.

Senator S. I. Hayakawa said that the CFTC should work toward protecting agricultural interests and expressed concern about the addition of new contracts, which were not agricultural in nature.

CFTC Chairman Philip McBride Johnson presented testimony in support of the CFTC legislative recommendations contained in S. 2109. Chairman Johnson said that S. 2109 would 'greatly enhance the Commission's credibility as an enforcer of the Act's requirements, and as a provider of services to both the public and the industry."

Chairman Johnson said the CFTC had adequate enforcement tools and would not request additional forms of penalties. However, he said the Commission desires to extend its existing enforcement "reach" into "those shadowy crevices where violators now find shelter, and to those

whose disregard of sound management practices inevitably sets the stage for public injury."

The CFTC proposes to streamline its procedures in handling registrations, exchange rules, and reparations.

In response to the draft General Accounting Office report on the CFTC, Chairman Johnson pointed out that many of the GAO recommendations are contained in S. 2109, and that those recommendations were contained in S. 2109 before the GAO report was released. Among those recommendations are a revamping of the reparations program and authority to share information with State agencies for law enforcement purposes.

A number of additional actions recommended by the GAO have also been implemented by the CFTC.

Among other legislative recommendations made by the Commission, Chairman Johnson listed the following, which are contained in S. 2109, relating to enforcement:

1. S. 2109, according to Johnson, would provide accountability by supervisors for the violations of persons whom they "control" or supervise.

2. The new legislation would require most principals and key employees of commodity pool operators and commodity trading advisors to register with the CFTC as "associated persons" in order to make those individuals more accountable.

3. Agents would be registered as associated persons of the futures commission merchants for whom they act, just as branch office personnel are currently required to do.

4. The CFTC would be empowered to bring actions to enforce the speculative position limits set forth in exchange rules.

5. S. 2109 would contain an "Open Season" provision allowing every Federal and State law enforcement agency to use any available law, regulation, ordinance or other tool at its disposal to attack off-exchange frauds masquerading as "commodity" investments.

6. The CFTC, under S. 2109, requests greater authority to share sensitive information with State law enforcement authorities—an activity now restricted by section 8 of the Act.

In the areas of service to the public and industry, the CFTC supported the following recommendations:

1. authority to grant temporary licenses, before the registration process is completed, to those who appear to be eligible based upon their applications;

2. authority to grant conditional registrations, such as a registration dependent upon special supervision;

3. creation of specific "statutory disqualifications" under which the CFTC could dispose quickly of manifestly ineligible applicants; and

4. contract market rules relating to "contract terms" and rules of major economic significance be made routinely subject to a prior-approval requirement.

With regard to reparations, the Commission proposed that it be authorized to redesign the program through rulemaking, in order to eliminate delays and cumbersome procedures now built into the Act. The Commission further proposed that the reparations program be limited to claims against persons who are registrants under the Act.

The Commission also proposed that a statutory transaction-based fee be adopted. An amount equal to 6 cents per side (long or short) would be assessed to each contract market for each futures contract and exchange-traded option traded for the account of an exchange member or a member of the National Futures Association.

A 12-cents-per-side fee would be paid for futures and exchange traded options made for the account of a nonmember of the NFA. The fees would be paid annually to the U.S. Treasury, rather than to the Commission, so that the Commission would remain fully accountable to Congress through the appropriations process.

In questioning by Senator Lugar, Chairman Johnson said the fees could constitute two-thirds of the CFTC budget, and more if the futures industry continues to grow.

Another important feature of the Commission legislation is the jurisdictional accord between the CFTC and the Securities and Exchange Commission. Under the proposals, the CFTC's exclusive jurisdiction over all futures trading and all options on futures would remain intact. In the area of options directly on securities, the SEC would be the sole Federal regulator. In regard to stock index futures, additional standards are created and special procedures are set to assure adequate SEC input—but not a veto—in the approval process.

II.

On March 1, 1982, representatives of six of the Nation's commodity exchanges and the President of the National Futures Association presented sharply differing legislative recommendations from those supported by the Commodity Futures Trading Commission Chairman, Philip Johnson, at the first hearing. These spokesmen were unanimous in their opposition to the imposition of a transaction-based user fee and, while endorsing a reauthorization of the agency, generally criticized the CFTC legislation as encouraging more government regulation instead of moving toward more industry self-regulation.

Leo Melamed, President of the National Futures Association, reported on the progress of the establishment of the National Futures Association, the new self-regulatory organization for the commodity futures industry.

Mr. Melamed stated that the NFA will enhance regulations by assuming responsibility for futures commission merchant audits; introducing broker oversight and ethical standards; commodity pool operator and trading advisor oversight and ethical standards; initiating sales practice reviews; overseeing options programs of FCM's; establishing registration and fitness standards for industry professionals, including sales personnel; beginning speedy, inexpensive, equitable customer claim procedures; and enforcing ethical rules applicable to many industry professionals.

The emphasis on self-regulation would include streamlining exchange rules approval and market designation procedures, giving exchanges front-line responsibility over speculative limits, and avoiding duplicative and redundant programs, including surveillance and enforcement efforts.

Mr. Melamed estimated that these actions would permit the CFTC to reduce its staff levels by at least one-third and result in a substantial reduction of its 1983 budget.

However, Mr. Melamed said the future of the NFA is threatened by the CFTC's proposal for a "special regulatory tax on all futures market participants, including hedgers and market makers." He argued that the CFTC's transaction-base user fee would deprive NFA of its funding base, destroying the underlying reason for its creation (i.e., to absorb some of the regulatory burdens in a cost efficient manner).

NFA made the following specific recommendations for amending the Commodity Exchange Act:

1. Provide that NFA can assume the burden of all registration-related functions under the Act, at no cost to the Government.

2. Provide that NFA's uniform, national arbitration system can effectively supplant the CFTC reparations system, at no cost to the Government.

3. Direct the CFTC to achieve regulatory efficiency and economy by integrating its programs with private sector programs; avoiding duplication and redundancy; and permitting a substantial reduction in its budget, or at least a major reallocation of its resources.

4. Repeal current CFTC "user fee" authority hastily adopted in 1978 and replace it with a constitutionally permissible service fee provision to defray CFTC expenses which directly benefit particular recipients.

5. Prohibit the imposition of futures trading transaction and related taxes at the State and local level, since such taxes, wherever imposed, are incompatible with the economic functions of futures markets.

Lee Berendt, executive vice chairman of Commodity Exchange, Inc., stated that the CFTC's proposals would further complicate, rather than streamline, the regulatory processes.

Mr. Berendt said he opposes the user fee system proposed by the CFTC. He also voiced opposition to the amendments in S. 2109 relating to the CFTC/SEC accord on jurisdictional boundaries because the legislation "unwisely blurs the lines of responsibility between these two agencies." He also expressed concern about the CFTC proposals relating to judicial review of CFTC emergency determinations.

On behalf of the futures trading industry, Mr. Berendt submitted the industry's legislative proposals entitled "The Futures Trading Regulatory Improvements Act of 1982."

That proposal contained the following recommendations:

1. Remove the anti-speculative bias from the legislative findings and include options.

2. Reallocate to contract markets the initial responsibility for establishing speculative limits and establish criteria and standards upon which the Commission may, after a hearing on the record, order a contract market to amend its rules pertaining to limits.

3. Put a limit of 6 months on the time the Commission may take to approve or deny new contract applications and delete the "public interest test" and substitute in its place a "hedging or risk-management test."

4. Limit contract market rules subject to Commission approval to those of general applicability and allow a contract market to put a rule into effect if the Commission had not disapproved the rule within 60

days after filing or if a disapproval proceeding instituted within that time is not completed within 180 days of institution.

5. Exempt from disclosure by the Commission trade secrets, confidential and proprietary information, and information the Commission has undertaken to keep confidential and require notice of subpoenas served on the agency requesting records containing information submitted by a person.

6. Provide expressly for judicial review of Commission "emergency" determinations and the remedial actions prescribed.

7. Provide for the regulation of "agents of futures commission merchants" a "introducing broker."

8. Limit the Commission from imposing penalties on the same conduct that was the basis of a disciplinary proceeding by a contract market or registered futures association.

9. Provide a 6-year authorization of appropriations for the Commission.

Robert K. Wilmouth, president and chief executive officer of the Chicago Board of Trade, stated that the CFTC proposal called for "more, not less, Federal regulation."

Mr. Wilmouth said there are four principal subjects which must be considered during the hearings. The first two are the proposal for transaction taxes to be imposed on futures markets and those who use them, and the proposals for increased regulatory authority, requiring increased manpower, submitted by the CFTC. The third subject involves the agreement between the CFTC and the SEC to divide jurisdiction over the markets for futures-related risk-shifting instruments. The fourth subject is the package of industry legislative recommendations now supplemented by the recommendations of the National Futures Association.

Mr. Wilmouth endorsed the industry's package of legislation. He said the Chicago Board of Trade believes that it is critical that Congress expressly provide for judicial review of CFTC "emergency" determinations and of the remedial actions prescribed by the CFTC. Other areas which Mr. Wilmouth recommended "fine-tuning" are the rules approval process, contract designation, and anti-speculative legislative findings. He also vigorously opposed the imposition of a user fee.

Clayton Yeutter, president of the Chicago Mercantile Exchange, emphasized that three questions must be answered by Congress during the CFTC reauthorization process: What level of regulation is necessary and proper? Who will provide the level of regulation? Who will pay for the regulation?

Mr. Yeutter said the CFTC's approach to the reauthorization process is excessive and constitutes a reversal of the legislative philosophy of the Act. He enumerated several areas of concern, including contract market designation (which he believes can be handled more expeditiously by the Government), rule approvals, position limits (where the exchange should be given "front line" responsibility for these actions), double jeopardy, disclosure of information, and judicial review of CFTC emergency actions.

Bennett J. Corn, president of the Coffee, Sugar & Cocoa Exchange in New York City, voiced his support for the reauthorization of the CFTC.

Mr. Corn listed a number of proposals by the CFTC for amending the Commodity Exchange Act which are "troublesome." He said the "user fees would be nothing more than a tax levied exclusively on the users of the futures markets." He said the user fees would place an unwarranted burden on an industry that is already spending huge amounts for regulatory purposes, and it would have a number of consequences that are contrary to the public interest.

Mr. Corn strongly opposed the CFTC proposal relating to section 13(b) of the Act, which would make any person who "controls" another "responsible" for violations of law by the person who is "controlled." He also stated that the CFTC's emergency powers should be subject to judicial review.

Representing the Midamerica Commodity Exchange, David H. Morgan reiterated the concerns expressed by the other witnesses. He said the imposition of user fees would "interdict the progress of NFA." He added that the smaller U.S. exchanges, such as Midamerica, will be "profoundly affected by the outcome of the reauthorization hearings."

Mr. Morgan opposed action on the CFTC portion of the CFTC/SEC accord until the Securities Oversight Subcommittee of the Banking Committee gives assurances that they will honor the SEC part of the joint agreement. He suggested that the SEC portion, through amendments to the Securities Acts, should be enacted first. Further, he stated that the agreement gives up too much jurisdiction over risk-shifting instruments from the CFTC to the SEC.

Mr. Morgan described the CFTC contract market review process as the "exchange's agony." He suggested that the Commission be required to respond to exchanges' contract applications within a certain timeframe.

In addition to the previously mentioned legislative recommendations presented by the other exchanges, Mr. Morgan and Midamerica supports rescinding the ban on options on enumerated commodities to allow options on such commodities to be traded on U.S. exchanges designated by the Commission as a contract market for the underlying commodity.

Robert Batte, representing the Kansas City Board of Trade, highlighted many of the concerns expressed by the other exchange spokesmen. However, in some key areas the Kansas City Board of Trade had a slightly different viewpoint.

Mr. Batte opposed (1) change in present laws to permit trading in options on agricultural items such as wheat and (2) time limits on new contract proposals.

The Kansas City Board of Trade proposed that (1) the CFTC be reauthorized for a longer period of time—up to 10 years and (2) Congress should ratify the recent agreement between the CFTC and the SEC concerning jurisdiction. Mr. Batte also suggested that a broadly based advisory committee be established to re-examine the role of the CFTC in light of the establishment of the NFA.

Batte, Morgan, and Corn agreed that a possible solution to the question about agricultural options trading would be to conduct an extensive study, as proposed by the National Grain and Feed Association.

In relation to agricultural options trading, Mr. Corn emphasized that the options on domestic agricultural commodities will serve an economic purpose. He cited a Louisiana study which indicated that

an options program in sugar would be very beneficial to small sugar producers.

III.

Witnesses on March 2, 1982, included Henry Eschwege, General Accounting Office; Neal P. Gillen, American Cotton Shippers Association; Daniel Amstutz, National Grain and Feed Association; Stuart Proctor, American Farm Bureau Federation; Jack Barbanel, Commodities Corporation; Don Eret, American Agricultural Movement; and William Brooks, National Grain Trade Council.

Mr. Eschwege, representing GAO, said the Commodity Futures Trading Commission should confine itself more strictly to an oversight role in the registering of futures professionals, and the National Futures Association should assume many of the responsibilities currently carried out by CFTC.

Mr. Eschwege added that Congress should authorize the NFA to register all futures professionals including futures commission merchants, commodity trading advisors, commodity pool operators, and floor brokers; screen them through fitness checks, including fingerprinting; test them for proficiency in futures trading; and allow registrants to appeal Association registration decisions to the CFTC.

The GAO spokesman said that the Commission's rule enforcement review program—the principal tool for monitoring enforcement by the exchange of their own rules—should be strengthened. In this regard, he said the Commission should develop improved, more explicit evaluation criteria.

In relation to contract approval, the GAO recommends that the CFTC streamline its approval process as well as amend its criteria to require exchanges to collect additional economic data to demonstrate that a proposed contract can reasonably be expected to serve a price discovery or risk shifting function. GAO further proposed that the Commission assess a fee to defray the appropriate costs of contract approval.

Mr. Eschwege suggested that in order to improve protection of customers and ensure a minimum level of competence, the CFTC should improve its registration program by: (1) requiring the registration of sales and supervisory personnel of commodity trading advisors and commodity pool operators, (2) implementing a "sponsorship" program for associated persons by futures commission merchants, (3) initiating fingerprinting of applicants, (4) periodically checking the fitness of registrants, and (5) establishing proficiency testing. The Commission also needs to do a better job of planning for the assumption of registration functions by the NFA.

He added that the CFTC needs to simplify its rules and procedures in the reparations program. He further emphasized that the CFTC needs to improve its use of automatic data processing.

Upon questioning by Senator Lugar, Mr. Eschwege said that the CFTC does not have staff in the "right places." He said the Commission should pay more attention to market surveillance instead of focusing on activities that could be turned over to the NFA.

The representatives of the farm and commodity organizations presented testimony with one central agreement—all the groups were generally opposed to the imposition of a transaction user fee.

Stuart Proctor, representing the American Farm Bureau Federation, stated that further analysis was needed of the impact of user fees on market liquidity. Although the AFBF has had a philosophy that those who benefit from government services should pay for those services, Mr. Proctor said that the CFTC-proposed user fee may make users pay a disproportionate share of regulatory costs.

Mr. Proctor indicated that the Farm Bureau opposes the CFTC directly regulating speculative position limits and believes that the exchanges should be allowed to set the limits with CFTC oversight.

The AFBF strongly recommended that language be included in the Committee Report calling for at least one Commissioner with an agricultural background.

Mr. Proctor said that the Farm Bureau had proposals on agricultural options under consideration. (In a later statement, AFBF expressed support for eliminating the specific prohibition against trading in options on domestic agricultural commodities, and for including agricultural options in the CFTC 3-year pilot program.)

Neal Gillen, vice president and general counsel for the American Cotton Shippers Association, said that legislative modifications are necessary to redirect the CFTC back to its originally conceived role of enforcement. "The exchanges, not the Commission, should have the exclusive authority to designate delivery points, determine the quantities to be traded, establish differentials, and to set margins and other contract terms."

Mr. Gillen said the markets should make contract decisions since the ultimate test of the contract will be whether it is traded or not. He also expressed opposition to granting CFTC the authority to establish margins for agricultural commodities. He strongly endorsed the self-regulatory programs and the NFA.

Daniel Amstutz, chairman of the Commodity Exchange Committee of the National Grain and Feed Association, stated that his association basically agreed with the CFTC/SEC accord regarding the division of regulatory authority over markets whereby the CFTC would have exclusive jurisdiction over all permissible futures contracts as well as options on those futures contracts, and would regulate options directly on foreign currencies traded on commodity markets. He said the association disagreed with any veto power being granted to the SEC or any other Federal agency in any area where the CFTC has exclusive jurisdiction.

Mr. Amstutz said that setting margin levels should be left to the exchanges, not to the Government. In regard to user fees, he stated that such fees should go directly to the U.S. Treasury so that the agency remain accountable through the appropriations process. He said that across-the-board transaction fees would be inequitable, in that the burden would fall on those who provide liquidity to the market. Mr. Amstutz said that at least 50 percent of the CFTC funds should come from general revenues.

The National Grain and Feed Association strongly recommended that no added provisions for the regulation of cash commodity forward-contracting be included in the extension of the legislation.

Jack Barbanel, general counsel for Commodities Corporation in Princeton, New Jersey, expressed opposition to CFTC proposals relating to setting speculative position limits, to establishing a user fee,

and to granting additional State regulatory authority over commodity pools. He stated support for the CFTC/SEC accord, however.

Don Eret, representing the American Agriculture Movement, stated that Federal regulation of commodity futures speculation should restrict speculation to the intended purpose of transferring ownership risk without at the same time destroying the property value of the commodity.

The AAM proposed the following amendment language:

> It shall be unlawful for any person directly or indirectly to acquire a speculative net short position with contracts sold at a price below 90 percent of the USDA parity price or to acquire a speculative net long position with contracts purchased at a price exceeding 110 percent of the USDA parity price for any United States producer marketed agricultural commodity traded in futures on any contract market.

William Brooks, speaking for the National Grain Trade Council, expressed strong opposition to the section of S. 2109 dealing with user fees. "This section, if enacted, would, in effect, make designated contract markets Government agents to assess, collect, and pay over to the Treasury what are euphenistically called 'fees' to recover appropriated funds covering the Commission's activities," Mr. Brooks said.

IV.

On March 10, 1982, representatives of the U.S. Department of Agriculture, the futures trading industry and the States' securities regulators testified on futures trading regulation.

William G. Lesher, Assistant Secretary for Economics at USDA, testified in support of reauthorizing the CFTC and specifically in support of lifting the ban on trading in options on farm commodities.

Dr. Lesher said that farmers, especially small and medium size operators, might benefit substantially from well-functioning options markets for crops and livestock:

> Options trading could increase efficiency in agriculture by facilitating more effective risk transfer. While it may take some time before viable agricultural options markets develop because certain issues will have to be addressed and resolved, no progress can take place until the ban is lifted.

The Assistant Secretary said that the primary reason options were banned was to stop abusive practices in 1936.

He said the Department of Agriculture recommends the removal of the 1936 ban on agricultural options trading, subject to the understanding that such trading would not start until after the CFTC and the commodity exchanges have completed their pilot program with options trading of other commodities, evaluated its feasibility, and developed procedures that are essential for effective control of trading abuses.

Howard A. Stotler, testifying on behalf of the Futures Industry Association, said his association strongly supports the reauthorization of funding for the CFTC in its present form. They also suggest that the CFTC be authorized for a period of 6 years.

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The Futures Industry Association recommended that the extent of the exclusive jurisdiction of the CFTC should remain unchanged. They added that the jurisdictional compromise reached between the CFTC and the Securities and Exchange Commission is "acceptable."

In relation to margin requirements for futures contracts, the FIA believes that the Commodity Exchange Act should not be amended to give the CFTC or any other Federal agency authority over this area. Primary responsibility for margins must remain with the exchanges, according to FIA.

FIA strongly opposes the concept of "user fees" and criticized the CFTC for failing to conduct a cost-benefit analysis before proposing user fees. "It makes more sense to let an industry self-regulatory association assume the functions it is better able to perform and to reduce CFTC expenses as that association gets underway," Mr. Stotler said.

Mr. Stotler said the FIA supports the view that the CFTC should continue to have exclusive jurisdiction over activities in the United States which involve transactions on foreign futures markets, but the CFTC proposal for authority for rule-making regarding such activities is much too broad.

He added that the FIA supports the principles and objectives of the "Futures Trading Regulatory Improvements Act of 1982" and the National Futures Association's legislative recommendations.

Edmund R. Schroeder, representing the Committee on Commodities Regulation of the American Bar Association, presented a number of technical and clarifying amendments to the Commodity Exchange Act. One amendment proposed by the ABA committee would be to make it clear that it is not unlawful for a U.S. trader to purchase options abroad. Members of the ABA subcommittee would not change the existing prohibition against any purchase or sale—whether or not solicited—of options involving so-called "enumerated commodities," that is, those agricultural commodities that have been subject to regulation since before 1975. In addition, the ABA subcommittee members proposed to create a new category of commodity professional called an "introducing broker", who solicits or accepts orders for contracts but does not accept margins from customers. Mr. Schroeder also highlighted other policy issues which were examined by the subcommittee.

Thomas A. Russo, presenting the recommendations of the Commodities Regulation Committee of the Association of the Bar of the City of New York, said there were three key issues of importance to his association: (i) the regulation of commodity pools; (ii) the reparations process of the CFTC; and (iii) the standards of conduct imposed on commodity industry professionals by the Commodity Exchange Act. Howard Schneider, Richard Miller, and Richard Nathan presented specific testimony on these points.

The New York Bar Association recommended that Congress should "explicitly reiterate, preferably by a statutory provision, CFTC preemption of all state regulation of commodity pools." The association also suggested that congressional action be taken to assure proper interpretation of the law relating to standards of conduct imposed on commodity industry professionals, particularly with respect to anti-

fraud provisions. The New York bar also proposed a two-tiered reparations process.

John J. Conheeney, chairman of Merrill Lynch Commodities, testified in support of reauthorizing the CFTC. However, Mr. Conheeney opposed the CFTC proposal to impose liability on "controlling persons" for the conduct of those they control. He said this would be unnecessary and would have the undesirable effect of exposing parent companies, their shareholders and their customers to liability arising from the totally separate operations of their commodity subsidiaries.

Mr. Conheeney supports the CFTC proposal to take an aggressive approach toward fraudulent activities in the area of off exchange instruments. He did, however, oppose the imposition of state regulatory authority over contracts traded on foreign exchanges because of inconsistent state regulations. He also suggested that the SEC's role with regard to commodity pools should be limited solely to regulating capital formation activities, i.e., the offer and sale of securities to pool participants.

David T. Johnston, senior vice president of E. F. Hutton & Company, expressed the same concerns. He also emphasized that the industry should be allowed to regulate itself through the National Futures Association:

> I hope that this Committee will see fit to provide legislation whereby the NFA can become operational with the provision that Congress review over the next three or four years the progress of this organization, and the savings of time and money on the part of the CFTC, before considering the imposition of a user's fee.

Harold J. Heinold, chairman of Heinold Commodities, testified in support of lifting the ban on the trading of agricultural options. He said there is no reason to continue the ban in light of the established regulatory mechanisms to control and regulate options:

> Agricultural options would give farmers a much better way to protect themselves. With options, a farmer could insure against the effect of downward market movements, but at the same time he could benefit from upward movements.

Mr. Heinold explained:

> Options would be like an insurance policy, and the premium paid for an option would be like an insurance premium. If the markets were to move in the farmer's favor, the option would not be needed and it would simply expire. If the market were to move against the farmer, he could exercise his option to sell his crop at the option price.

Mr. Heinold also expressed concern about the CFTC's role in setting speculative limits and stated that the limits were too low and that the law in this area needed to be revised. On the matter of the CFTC–SEC accord, he recommended that it be studied further rather than adopted, since court decisions in this area might make action by Congress unnecessary.

Michael Unger, representing the North American Securities Administrators Association, testified in support of legislative proposals

which would give States more authority in enforcing and regulating the commodity futures trading industry. Mr. Unger addressed the following areas in his testimony: (i) the inability of the CFTC to combat commodities fraud through administration of the Commodity Exchange Act; (ii) the preemption of basic State police power; (iii) the difficult enforcement problems faced by State securities administrators in attempting to combat commodities fraud; and (iv) the legislation proposed by the CFTC and his association's legislative proposals.

v.

On March 11, 1982, Theodore Thomte, a director of the National Association of Futures Trading Advisors and president of Thomte & Company in Boston, Massachusetts, expressed general support for the CFTC–SEC accord on jurisdiction.

Mr. Thomte said his association, which represents the nation's commodity trading advisors, strongly supports well-designed disclosure standards as well as diligent enforcement of antifraud standards by Federal and State authorities. He said the public would be better protected against fraud while at the same time those legitimate operators in the indusfry will be subjected to only one uniform, national scheme of regulation rather than 50 additional State "rule" books. He supports a greater enforcement role by the CFTC with supplemental enforcement by States.

In questioning by Senator Lugar, Mr. Thomte said the NAFTA believes that margin requirements should be under exchange control. He said the recent CFTC approval of the National Futures Association, and industry self-regulatory body, would enhance the regulatory scheme of futures trading.

Clinton Burr, general counsel for Rosenthal & Company, a Chicago-based commodity brokerage firm, said there is considerable concern over reparations proceedings by the CFTC because of the delays, the growing backlog and the lack of finality in the decisions. He said the problem with the CFTC reparations programs is not with the statute but with the CFTC's administration of the statute. "With proper attention from the Commission the CFTC's reparations program could become a forum of expertise involving not only commodity disputes but also serve as a model for a forum involving securities matters as well."

Louis E. Carabini, the president of Monex International, testified about his industry's concern over the regulation of leverage contracts by the CFTC. Monex' principal activity is the purchase from and sale to private individuals of precious metals, primarily gold and silver bullion and bulk gold and silver coins, both on a cash basis and pursuant to a leverage contract.

Carabini said the CFTC has been directed to regulate the leverage industry but that the CFTC has "shirked its responsibility." He urged that the Subcommittee recommend to the Congress that it reject the CFTC's legislative recommendations in the leverage area and instead repeal that portion of section 19 of the Commodity Exchange Act which permits the CFTC to treat leverage contracts as futures and replace it with statutory provisions clearly and specifically di-

recting the Commission to move expeditiously to adopt substantive and rational regulations for the leverage industry.

James J. Groberg, chairman of the International Precious Metals Corporation, said that the leverage industry is "pleading for meaningful regulations." "We have been asking for supervision for eight years. Any further proposed study should be rejected. Further analysis is not necessary. We want a comprehensive, dependable set of regulations to follow."

Mr. Groberg said the leverage industry had voluntarily followed stringent regulations but still they needed the regulation of the CFTC.

David F. Simon, general counsel for First National Monetary Corp. of Southfield, Michigan, also emphasized the concerns expressed by leverage firms. He said the study proposed in section 25 of S. 2109 should be eliminated and Congress should direct the Commission to adopt uniform leverage trading regulations. He said regulation of the leverage industry should be conducted by CFTC, which has the commodity expertise, rather than any other Federal agency or the individual States.

Glenn Willett Clark, a private attorney, said that the proposed legislation—S. 2109—blurs the distinction between futures markets and cash forward markets. He also expressed that both the SEC and the CFTC would gain expanded jurisdiction under the CFTC-SEC jurisdictional accord.

Gerald L. Fishman, representing Dowdex Corporation, said that dealer option grantors should be subject to no net capital requirements in addition to an already existing substantial and appropriate net worth requirement, nor should dealer option grantors be subject to joint and several liability for violations not their own.

Fishman also expressed concern about additional State regulatory powers.

Carl Ek, representing the National Farmers Union, said his organization supports the reauthorization of the CFTC and the establishment of the National Futures Association as a self-regulatory body for the industry.

NFU supports the CFTC's two-part proposal that it be permitted to share evidence and information with State law enforcement agencies, and that those agencies be authorized to prosecute certain commodity fraud cases under their own laws.

The NFU is strongly opposed to the user fee concept advanced by CFTC. Mr. Ek expressed doubts whether the full cost of user fees can readily be absorbed either by the floor brokers or the futures commission merchants for whom they trade. NFU believes that user fees, like any externally imposed expense in the marketing system, will ultimately settle upon the producer.

The NFU also believes that the CFTC should retain the ability to quickly intervene in the market in response to severe disruptions. Ek stated that judicial review of the CFTC's emergency powers would seriously enervate those powers.

In regard to options trading, Mr. Ek said the NFU hopes that the Subcommittee will allow the current options pilot program to run its course before opening the field any further. During this trial period,

the CFTC should have ample opportunity to gather information on financial instruments options, and then assess the probable effect such trade would have in agricultural commodities. NFU urged the Subcommittee to request the CFTC to prepare a final report which would evaluate the performance of options trading during the trial period, and provide recommendations on the feasibility of trading in agricultural commodity options.

In response to questions from Senator Lugar, Mr. Ek stated that NFU would have no objection to having other entities, such as USDA and private groups, study the issue of agricultural options trading prior to its implementation by the CFTC.

II.

Subcommittee Markup

The Subcommittee on Agricultural Research and General Legislation, chaired by Senator Richard G. Lugar, met on March 24 and 25, 1982, for purposes of marking up a subcommittee bill. At the outset, the subcommittee decided to use S. 2109, a bill introduced at the request of the Commission, as the vehicle for markup. The subcommittee then proceeded to examine the various issues raised in S. 2109, S. 2210 (introduced by Senator Roth and others), and other legislative proposals brought forward by the General Accounting Office, the North American Securities Administrators Association, a group of leading commodities industry representatives, the National Futures Association, the American Bar Association Committee on Commodities Regulation, and the Bar Association of the City of New York. The principal issues examined were the following:

CFTC/SEC jurisdictional agreement

The subcommittee considered the CFTC/SEC jurisdictional agreement during the course of its markup sessions. This agreement leaves the CFTC with exclusive regulatory responsibility for all futures trading and for all trading of options on futures contracts. The SEC would continue to be responsible for the regulation of options based on individual stocks. In addition, the agreement specifies that the SEC will regulate all options based on exempted securities, such as debt instruments issued or guaranteed by the United States Government, and options on certificates of deposit. The trading of options on foreign currencies will be regulated by both agencies; the SEC will regulate these options when they are traded on a national securities exchange, the CFTC will regulate them when they are traded other than on a national securities exchange.

The bill makes explicit that the CFTC's exclusive jurisdiction over commodity pools does not abrogate the applicability of certain aspects of the 1933 and 1934 Federal securities laws to securities issued by commodity pools and sold to the general public. The bill also prohibits the trading of futures contracts based on individual corporate or municipal securities.

Senator Lugar noted that, while some witnesses had expressed specific reservations about certain portions of the agreement during the course of the reauthorization hearings, the agreement had received

general approval from the witnesses. He further noted that the Subcommittee was, in effect, being asked to approve the CFTC's portion of the agreement. Senator Huddleston and Senator Boren commented that this agreement was a complicated matter, that the respective agencies had done a good job on it, that it is doubtful that the subcommittee could improve it and that the subcommittee should adopt it as stated in S. 2109. Senator Lugar commended the CFTC and the SEC for their agreement and the subcommittee unanimously adopted the CFTC's portion of the agreement as proposed in S. 2109.

User charges and period of reauthorization

A major issue considered by the subcommittee was the provision of S. 2109 levying a user charge on each futures or option contract traded on an exchange and on each leverage and dealer option transaction entered into. After the proposal was described, Chairman Johnson of the Commission explained the background and the reasons for the fee proposal. Senator Lugar reviewed the testimony on this subject that had been given at the subcommittee hearings.

After general discussion of the issue, Senator Hayakawa offered an amendment which would assess the exchanges a total amount equal to two-thirds of the Commission's appropriation. Each exchange would be assessed an amount in proportion to the number of futures and option contracts traded on that exchange. The assessment would be remitted quarterly to the Treasury, and each exchange would be free to use whatever method it deemed best to raise the amount of the assessment. In support of his amendment, Senator Hayakawa argued that the proposal in S. 2109 has several problems: the incidence of the fee falls disproportionally on those who trade the most *i.e.*, the speculators, and since the exchanges must only remit annually the fees collected, they have free use of the traders' money for long periods of time. The Senator pointed out that his amendment resolves these and other problems by clarifying the portion of the Commission's budget that would be financed from user fees, by allowing the exchanges to raise the fees in any manner they see fit, and by requiring quarterly remittance of the fees to the Treasury.

After considerable discussion, several members of the subcommittee indicated that, if no user fee proposal were adopted the reauthorization period of the Commission should be fairly short. The subcommittee did not agree to either the Hayakawa amendment or the user fee provision in S. 2109. Instead, the subcommittee agreed to require the Commission to conduct a study of the effects of a user or transaction fee. This study is to be completed by January 1, 1984.

On the reauthorization question, the subcommittee tentatively adopted an open ended authorization period for the Commission as proposed by Senator Huddleston. However, after consideration of the user fee proposal, the subcommittee agreed to a 2-year reauthorization period in order to force reconsideration of the user fee issue upon completion of the Commission study. The subcommittee made it clear, however, that this short reauthorization does not reflect any discontent on the part of the subcommittee with the performance of the Commission.

State jurisdiction and information sharing

The subcommittee considered a number of proposals with respect to an expansion of State jurisdiction over transactions in commodities

and information sharing between various government entities. The Commission proposed an "open season" jurisdictional provision, *i.e.*, that the States and other agencies of the Federal Government be permitted to use any law, regulation, or tool at their disposal, including State securities laws, against the sale of futures contracts not consumated on a contract market and against any individual who should have registered with the Commission but who failed to do so.

The subcommittee also considered the proposals in S. 2210, introduced by Senator Roth and others. These proposals would give the States jurisdiction over dealer options and leverage transactions and permit the States to register leverage dealers and their sales personnel, insofar as this registration does not conflict with the Commodity Exchange Act or regulations. Additionally, these proposals would require that the Commission give each State the identities of all registrants dealing directly with the public within that State and permit the States to proceed against any registrant dealing directly with the public for violations of State antifraud commodities or securities statutes.

Senator Huddleston noted that the several States are not currently inhibited from proceeding against fraudulent commodity operators under State general antifraud statutes. After additional discussion, the subcommittee adopted the "open season" provisions proposed by the Commission, with an amendment to give the Commission discretion to permit the application of these "open season" provisions to commodity transactions conducted on foreign boards of trade, exchanges, or markets, should the Commission choose to do so.

In the area of information sharing, the Commission proposed that it be permitted to share information with States and foreign governments, beginning in the preliminary stages of an investigation. In response to questions, Chairman Johnson noted that the Commission wishes to cooperate with governments that are investigating matters of interest to the Commission. A similar legislative proposal was made in S. 2210. After discussion, the subcommittee adopted the Commission's proposal with an amendment offered by Senator Boren, to clarify that all information shared with State or foreign governments would be subsequently disclosed only in adjudicatory administrative or judicial law enforcement proceedings, as opposed to legislative fact-finding hearings or sessions.

The subcommittee specifically considered the proposal in S. 2210 which would require that the Commission give each State the identities of all registrants dealing directly with the public in that State. The subcommittee declined to adopt this provision, however, because the members felt that such a provision might lead to adversary proceedings between the Commission and a State. The subcommittee did, however, adopt a provision pursuant to which the Commission would supply registration information upon the specific request of a State or when the Commission has determined that the information is appropriate for use by the State.

Approval and enforcement of contract market rules

The subcommittee dealt with a number of issues within the general subject of contract market rules. The principal issue, however, was whether specific time limits for the review of contract market rules

should be established. The Commission proposed a sharp reduction in the number of rules which would be reviewed, while industry representatives believed that greater emphasis should be placed on specific time limits for the review procedures.

Senator Lugar proposed that this question be resolved by setting a time certain for completion of the review of a rule, but lengthening this time from 60 days (the length of time suggested by industry representatives) to 180 days. He further proposed that if the Commission does not approve or institute disapproval proceedings within 180 days of the filing date of the rule or if such disapproval proceedings have not been completed within 1 year of the filing date, the rule may be put into effect. After additional discussion, this proposal was adopted by the subcommittee.

The subcommittee adopted a provision requiring the Commission, when disapproving a rule, to specify the section or sections of the Act which are or would be violated by the rule. In adopting this provision, the Subcommittee noted that the Commission already follows this practice in discussions with industry representatives relative to the review of contract rules. A final proposal adopted by the Subcommittee will permit the Commission to publish a notice in the *Federal Register* summarizing any economically significant rule, in lieu of publishing the full text of the rule.

New contract approval process

Although S. 2109 did not contain any proposed changes in the approval process for new contracts, the subcommittee did consider two industry proposals relating to this process. One proposal would have eliminated the "public interest" test in section 5(g) of the Act and substituted a requirement that the board of trade seeking approval of a new contract demonstrate that the proposed futures contract can be used to perform a hedging or risk-management function. The other proposal would have given the Commission 6 months to approve new contract applications or to deny the applications and specify the grounds for denial. Also, an exchange would have 90 days after denial of its contract application to request a hearing, which must commence within 30 days of such request.

In view of the Commission's need to consider the possible detrimental effects, as well as the broader range of salutory effects associated with new futures contracts, the subcommittee did not change the present language of section 5(g) of the Act, thus leaving the public interest standard unchanged.

After discussion of the issue of a time limit on Commission consideration of new futures contract applications, Senator Lugar suggested that the subcommittee impose a 1-year time limit on such consideration and give the exchanges 180 days after denial of any application in which to request a hearing. At Chairman Johnson's suggestion, the subcommittee considered two possible exceptions to the 1-year time limit—when the application is incomplete and when the Commission needs additional time for consultation with other Federal agencies. After discussion of these exceptions, the subcommittee decided to place a 1-year time limit on Commission consideration of new futures contract applications and to provide an exception to this 1-year limit only in the case of incomplete applications. In such a case, the running of the 1-year period would be stayed from the time the

Commission notifies the board of trade that its contract application is incomplete until the time the Commission receives an adequately revised application from the board of trade.

Registration

The subcommittee considered proposals dealing with a number of issues in the registration area. Chief among them was the form and manner of registration of "agents" of futures commission merchants. The Commission proposed that these "agents" be registered as associated persons of the futures commission merchants with whom they were associated, while the American Bar Association Committee on Commodities Regulation and representatives of the industry proposed that these "agents" be registered within a new registration category, identified as the "introducing broker" category.

In response to questions by Senator Huddleston and others, Chairman Johnson stated that the Commission believed that futures commission merchants should be responsible for the activities of these "agents" because customers view the "agent" and the futures commission merchant as one entity and do not distinguish between services provided by the "agent" and those provided by the futures commission merchant. Senator Boren observed that either of these forms of registration would be preferable to the current situation, in that the "agents" are not presently subject to any registration requirement.

After further discussion, the subcommittee agreed to adopt the "introducing broker" provision. Under this provision the term "introducing broker" would include any person who solicits or accepts customers' orders for commodity futures contracts, but who does not retain customers' funds. The Commission would be authorized to develop a regulatory structure for introducing brokers modeled after the one presently in effect for futures commission merchants.

The subcommittee also adopted a number of provisions proposed by the Commission. The subcommittee streamlined the registration process by authorizing the Commission to grant temporary licenses of up to 6 months in length. The subcommittee also authorized the Commission to register conditionally or restrictively, when neither a denial of registration nor an unconditional or unrestricted registration is appropriate. The subcommittee adopted an extensive system of enumerated statutory disqualifications applicable to all persons registered or seeking registration under the Act and agreed to extend the "associated person" registration category to include the sales personnel of commodity pool operators, commodity trading advisors and introducing brokers. The subcommittee also adopted provisions (1) extending the Commission's power to establish training and fitness standards for all applicants for registration, (2) empowering the Commission to authorize the National Futures Association to take over some of the Commission's regulatory functions and (3) authorizing the National Futures Association, in connection with the performance of its self-regulatory functions, to collect the fingerprints of its members and submit these fingerprints to the Attorney General for identification and screening. Lastly, the subcommittee adopted a provision proposed by the Commission and amended by the subcommittee making it unlawful for any registrant to permit a person to be associated with

said registrant if the registrant knew or should have known of facts constituting a statutory disqualification under amended section 8a(2) of the Act, unless the registrant made these facts known to the Commission and the Commission determined that the person should be registered or temporarily licensed.

Judicial review of the exercise of emergency powers

On the issue of whether there should be judicial review of the exercise of the Commission's emergency powers, Senator Heflin offered an amendment to provide for judicial review of any emergency action taken by the Commission under section 8a(9) of the Act. The amendment would limit judicial review to those situations where the Commission's action is arbitrary, capricious, lacking a reasonable basis in fact, or taken in bad faith. Such review would take place in the United States district courts. Senator Heflin argued that judicial review, as provided for in his amendment, would prevent the exercise of the Commission's emergency powers without careful and thorough study of the consequences. Chairman Johnson stated that the Commission has no objection to judicial review after the fact, but that the Commission was concerned that permitting a court to set aside an order before it was effective would remove one of the most effective regulatory tools the Commission has.

After much discussion, the amendment was redrafted to provide for judicial review of the Commission's exercise of its emergency powers only in an appropriate United States court of appeals. No temporary restraining order, order of preliminary or permanent injunction, other stay of the Commission's order, or order of mandamus could be issued by the court until a hearing was held before a panel of the court and a determination was made by the court that the Commission's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Speculative trading and position limits

The subcommittee considered a number of proposed amendments to section 4a of the Commodity Exchange Act dealing with the power to set speculative trading and position limits. In S. 2109, the Commission proposed amendments that would confirm the exchanges' authority to establish speculative limits for futures and option contracts and permit the Commission to establish speculative limits by rulemaking.

The Commission further proposed that exchange-established limits be identical to Commission-established limits, unless the Commission approves a variation. Finally, the Commission proposed that violations of exchange-established speculative trading or position limits on futures or option contracts be made violations of the Act, if such limits have been approved by the Commission.

Representatives of the futures industry also made several proposals that included: (1) shifting to the contract markets the initial responsibility for establishing whether speculative trading or position limits in any futures or option market are needed and, if so, establishing the level of such limits; and (2) authorizing the Commission to require a contract market to review and revise its speculative limit levels only after the Commission has made certain specified findings after the conclusion of a hearing on the record.

Chairman Johnson stated that the Commission wished to have authority to establish speculative limits through rulemaking, because the rulemaking procedure was more expeditious than the issuance of orders. He further stated that the rulemaking procedures afford all interested parties an opportunity to comment on and object to any speculative limit proposal under consideration.

Senator Lugar stated that, in his view, the issue of the establishment of speculative limits was a critical one in terms of the Commission's strength and that the issue could be tilted toward strengthening or weakening the Commission. Senator Lugar then stated that he was in favor of adopting the Commission's position, as was provided in S. 2109. After further discussion, the subcommittee adopted the provisions of S. 2109.

Offer and sale of foreign futures contracts in the United States

The subcommittee considered proposals made by the Commission in S. 2109 which would give the Commission explicit authority to adopt reasonable regulatory measures applicable to persons in the United States who offer and sell commodity futures contracts made or executed on a non-United States board of trade, exchange or market. In response to a question from Senator Lugar, Chairman Johnson stated that the Commission's proposal is not intended to govern foreign boards of trade, exchanges, or markets, but rather is to apply only to persons or firms located in the United States that serve as brokerage firms or sales agents for foreign exchanges.

Senator Boren stated that he believed the proposal made by the Commission was too broad and requested that the Committee staff draft language specifying the kind of regulations which the Commission could issue governing the offer and sale of foreign commodity futures contracts.

The staff subsequently drafted language specifying that the Commission could promulgate rules and regulations applicable to those persons offering and selling foreign commodity futures contracts in the United States. These rules and regulations may (1) proscribe fraud, (2) require the disclosure of risk and set reporting requirements, (3) require that minimum financial standards be met, (4) require the keeping of books and records, (5) require the safeguarding of customers' funds, and (6) require the registration of those persons offering and selling foreign commodity futures contracts in the United States. These rules and regulations may impose different requirements for different persons, depending upon the particular foreign board of trade, exchange or market on which such contracts are made or executed.

The subcommittee also considered whether the "open season" provision contained in S. 2109 should apply to foreign boards of trade, exchanges or markets. After consideration of this matter, the subcommittee adopted a provision exempting foreign boards of trade, exchanges and markets from the "open season" provisions, except that the Commission may, by rule or regulation, permit the application of these "open season" provisions to commodity transactions conducted on foreign boards of trade, exchanges or markets, should it choose to do so.

"Controlling person" provision

The subcommittee considered the so-called "controlling person" provision several times during the markup. Under S. 2109, as introduced, any person who directly or indirectly controls another person who has violated the Act or regulations could be held responsible for the violation, unless the controlling person could show that he did not know or, in the exercise of reasonable care, did not have reason to know the facts constituting the violation. The subcommittee discussed an alternative that would allow use of this doctrine only in proceedings brought by the Commission (that is, no private right of action would be available) and limit the remedy for violation of the provision to a denial, suspension, or revocation of registration by the Commission. There was concern expressed about the possibility of criminal prosecution under this provision. The subcommittee also discussed adopting the language of S. 2109, but shifting the burden of proof from the respondent to the Commission.

Senator Lugar then suggested that the subcommittee review the controlling person concept in the Securities Exchange Act of 1934. Under that provision, any person who directly or indirectly controls any person liable under the Act or regulations may be held liable for such violation to the same extent as the controlled person, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation. After some discussion, the subcommittee decided to adopt this provision, after limiting its enforcement to actions brought by the Commission, so that there would be no private right of action under the provision.

Agricultural options

During the course of the subcommittee markup, Senator Helms offered an amendment to repeal the 1936 ban on the trading of options on agricultural commodities. In support of this amendment, Senator Helms stated that agricultural options could be a helpful marketing tool which the private sector could provide to farmers and that this amendment was a first step toward making the trading of these options a reality. Senator Helms further noted that adoption of this amendment does not mean that options on agricultural commodities would be immediately available, since these options would be subject to the same statutory provisions (sections 4c(b) and 4c(c) of the Act) which apply to options on nonagricultural commodities. Senator Helms also stated that, prior to permitting agricultural options to trade, a study of options pricing and grantor eligibility should be made, the present options pilot program should be evaluated, and the Commission should certify that it is able to regulate this activity.

In response to questions from subcommittee members, Chairman Johnson stated that the circumstances surrounding the imposition of the 1936 ban on the trading of options on agricultural commodities were very different from those which obtain today and that the Commission supported the Helms amendment. Senator Boren noted that many agricultural groups also supported this amendment. The subcommittee then adopted the Helms amendment.

Leverage transactions

With regard to the regulation of leverage transactions, the subcommittee discussed several different amendments proposed by the Com-

mission, the North American Securities Administrators Association, the major leverage dealers, and Senator Roth and others (in S. 2210). After considerable discussion of the issues, the subcommittee agreed to hold this matter over for consideration by the full Committee.

Private right of action

The subcommittee considered the question of whether to provide an explicit private right of action for any violation of the Act and decided not to include such a provision, in view of several pending cases before the Supreme Court dealing with this issue. Although the Commission's legislative proposal did not contain a provision on private rights of action, Chairman Johnson testified before the subcommittee that the Commission favors a private right of action based on violation of the substantive provisions of the Act, such as fraud, manipulation, prearranged trading, aiding and abetting or conspiracy to accomplish those acts. He further testified that the Commission did not favor a private right of action against an exchange where the only allegation is that the exchange has not enforced its rules perfectly.

The subcommittee carefully considered a provision in S. 2210, introduced by Senator Roth and others, which would provide that the reparations provisions of the Act would not impair the right of a person complaining of a violation of the Act, or the rules, regulations, or orders thereunder, to bring suit based on that violation in a United States district court within 3 years after the cause of action accrues.

The subcommittee declined to adopt a provision providing for an explicit private right of action, since several cases were pending before the Supreme Court on the issue of whether an implied private right of action exists under certain provisions of the Commodity Exchange Act. On May 3, 1982, the Supreme Court issued a ruling in these cases, holding in a 5–4 decision, that the implied private rights of action existent in the Commodity Exchange Act prior to 1974 survided the amendments made to that Act in 1974 and that implied private rights of action exist for violations of the statutory prohibition against fraudulent conduct and of the provisions designed to prevent price manipulation.

Legislative findings

The subcommittee considered proposals made by the National Futures Association and others to revise the legislative findings contained in section 3 of the Commodity Exchange Act. Specifically, those groups proposed that the subcommittee add a specific finding that the trading of commodity option contracts is in the national public interest and that the subcommittee delete the findings that transactions and prices of commodities traded on boards of trade are susceptible to speculation, manipulation and control which cause sudden or unreasonable detrimental price fluctuations and constitute a burden on interstate commerce.

In response to questions from subcommittee members, Chairman Johnson stated that Congress had enacted an early forerunner of the Commodity Exchange Act, using the taxing power as the constitutional basis for the legislation. When that legislation was declared unconstitutional, Congress enacted essentially the same legislation again, using the commerce clause as the constitutional basis for the leg-

islation. The language of section 3 was drafted to invoke the commerce clause as that clause was interpreted by the courts in 1922.

After considering this matter, the subcommittee agreed that a specific legislative finding dealing with commodity options contracts should be incorporated into section 3 of the Act. The subcommittee further decided to retain the existing legislative findings in section 3, but to modernize the statutory language used to express some of the findings.

Disclosure of information—confidentiality

The subcommittee considered proposals with respect disclosure of information under section 8 of the Commodity Exchange Act. The subcommittee examined a proposal made by the Commission to preclude the disclosure of information gathered by the Commission in connection with the investigation of any person and a proposal made by industry representatives to specifically exempt from disclosure any proprietary information and any information the Commission has agreed to keep confidenttial.

In response to questions, Chairman Johnson noted that much of the information addressed by the industry proposal is information which the Commission now has discretion to release to the public under the Freedom of Information Act. Chairman Johnson further noted that the industry proposal overrides the Freedom of Information Act and removes the Commission's discretion to release this kind of information.

After further discussion, the subcommittee adopted the Commission's proposal regarding disclosure of investigatory information and a provision precluding the disclosure of confidential or proprietary information that would not customarily be disclosed to the public by the persons from whom it was obtained, except that the Commission may disclose such confidential or proprietary information if disclosure is necessary for public comment.

"*Double jeopardy*"

During the subcommittee hearings, industry representatives recommended that section 6(b) of the Commodity Exchange Act (which authorizes administrative proceedings against any person for violation of the Act and Commission regulations) be amended to permit the Commission to institute an adjudicatory proceeding against a person who has been disciplined by a contract market or a registered futures association only if the Commission first finds that the discipline imposed by the self-regulatory organization was inadequate in light of the magnitude of the alleged offense.

Industry officials testified that, at present, the Commission may obtain completed investigatory files from a contract market. If the contract market has imposed penalties on its member, the Commission's subsequent action may lead to additional penalties against the person for the same conduct, without regard to the severity or appropriateness of the initial punishment (so-called "double jeopardy"). Industry representatives also testified that the possibility of sanctions being imposed by both a self-regulatory organization and the Commission makes it difficult for the self-regulatory organization to obtain cooperation with its investigations.

In contrast, the Commission Chairman testified that an exchange's sanctions are effective only with respect to the person's activities on that exchange. The Commission has at its disposal certain remedies of more general applicability than those available to an individual exchange, such as administrative cease and desist orders, which apply to the person's activities on any exchange. Furthermore, the subcommittee was advised that the Commission, in deciding whether to undertake an action against a person under section 6(b) of the Act, takes into account any previous disciplinary action against the person by a contract market and the adequacy of the penalties imposed by the self-regulatory organization in connection with the disciplinary action.

On the basis of the testimony it received, the Subcommittee decided to continue current law, which empowers the Commission to take administrative enforcement action against a person who violates the Act and to impose appropriate sanctions without regard to penalties imposed on the violator by a self-regulatory organization. However, the Committee expects that the Commission, in the exercise of its prosecutorial discretion, will consider any previous disciplinary action taken against a person by a self-regulatory organization and the adequacy of any sanctions imposed by the self-regulatory organization.

The subcommittee also addressed other issues not specifically discussed in this portion of the report. With respect to those issues, the subcommittee generally adopted the Commission's proposals as contained in S. 2109. After discussion of all of the issues before the subcommittee, Senator Boren moved that S. 2109, as amended by the subcommittee, be reported to the full Committee. The motion was agreed to unanimously.

Full Committee Markup

On March 31, 1982, the Committee met to consider S. 2109, as reported by the Subcommittee on Agriculture Research and General Legislation. After a brief summary of the major actions taken by the subcommittee, it was pointed out that the one issue not resolved by the Subcommittee related to leverage transactions. Before dealing with that issue, the Committee discussed several other matters.

Senator Boren raised a question with regard to the controlling person provision and whether the burden of proof should be on the Commission or on the person against whom the Commission is proceeding. The subcommittee had adopted a provision under which a person who controls a violator of the Commodity Exchange Act may be also held liable for the violation committed.

Two elements of proof in such cases would be whether the controlling person acted in good faith and directly or indirectly induced the act or acts constituting the violation. Senator Boren pointed out that it was his understanding that the Subcommittee proposal would put the burden of proof on the Commission. Senator Lugar concurred and staff was directed to clarify the language to comport with the subcommittee's action.

At Senator Heflin's request, the standard of review in the case of judicial review of the Commission's exercise of emergency powers was also clarified. It was pointed out that the subcommittee intended to use the same standard of review as is contained in the administrative pro-

cedure provisions of title 5 of the United States Code. Therefore, the staff was directed to clarify that the panel of the court reviewing the exercise of the Commission's emergency powers would have to find that the Commission's action was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law before it could issue a stay of the Commission's action or an order of mandamus.

Senator Boren then offered 2 technical amendments. One amendment deleted the phrase "respecting customer accounts" from proposed section 4(b) of the Act (relating to the authority of the Commission to make rules and regulations concerning certain aspects of the offer and sale of foreign futures contracts within the United States). The amendment would make it clear that the Commission would have the authority to require the keeping of books and records with respect to matters involving more than just customer accounts. The second amendment would clarify that under proposed section 12(e) of the Act commodity transactions conducted on or subject to a foreign board of trade or market would not be subject to State jurisdiction, except as otherwise specified by the Commission. These amendments were agreed to unanimously.

With regard to regulation of leverage transactions, the Committee carefully considered proposed amendments separately submitted by the Commission, the North American Securities Administrators Association (NASAA), and the major leverage dealers. The Committee also carefully considered those provisions of Senator Roth's bill, S. 2210, which relate to leverage transactions. The Commission proposed statutory ratification and extension of existing regulatory moratoria until September 30, 1984, and a study of the leverage industry in the meafttime, with the results of the study and recommendations as to the appropriate regulatory scheme for leverage transactions to be submitted to Congress by that date. Both S. 2210 and NASAA proposed a statutory authorization for States to require registration of persons soliciting or accepting orders for leverage transactions and to regulate such transactions insofar as the exercise of such jurisdiction does not conflict with the Commodity Exchange Act or regulations thereunder. S. 2210 and NASAA also proposed that the States be permitted to proceed against leverage merchants in State court or in State administrative proceedings for violations of State securities or commodities antifraud statutes. The leverage dealers proposed the repeal of section 19(d) of the current law and implementation of a comprehensive regulatory program for leverage transactions.

Senator Huddleston proposed that the Committee retain current law with regard to the regulation of leverage transactions. He further proposed that language be included in the Committee report on S. 2109 expressing (1) the concern of the Committee over the failure of the Commission to regulate leverage transactions after being twice directed to do so, (2) the intention of the Committee that the Commission regulate leverage transactions as expeditiously as possible, (3) the recognition by the Committee of the Commission's moratoria with respect to the leverage industry and the Committee's intention that the moratoria be lifted as quickly as possible, (4) the intention of the Committee to retain exclusive jurisdiction in the Commission over leverage transactions, and (5) the intention of the Committee to retain section 19(d) of the Act but solely to protect the public from attempts to disguise off-

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exchange trading in futures contracts as the purchase of commodities through otherwise lawful leverage transactions. Senator Boren indicated that the Commission should have discretion in determining when the moratoria should be lifted and that this should be done as quickly as the Commission believes is prudently possible. Without objection, the Committee agreed to the Huddleston proposal as modified by Senator Boren.

The Committee discussed the issue of whether to impose a transaction based user fee to defray the costs of the Commission in regulating transactions within the jurisdiction of the Act. Senator Lugar read a letter received from David Stockman, Director of the Office of Management and Budget, expressing concern over the failure of the subcommittee to adopt the Commission's user fee proposal. It was pointed out that the subcommittee had agreed not to impose a user charge at this time, but rather to require the Commission to conduct a study, to be completed by January 1, 1984, which would look at the effects of a transaction fee on market liquidity, the public versus the private benefit of the Nation's commodity markets, and the incidence of such a fee. In addition, it was noted that the period of reauthorization had been limited to 2 years to force reconsideration of the user fee issue upon completion of the Commission study. After general discussion of the issue, the Committee endorsed the subcommittee's action on this matter.

The Committee discussed whether gold coins would be considered "foreign currency" as that term is used in new subsection (f) which is proposed to be added to section 4c of the Act. This new subsection provides that the Act's jurisdictional provisions will not extend to transactions in options on foreign currency traded on a national securities exchange. Senator Huddleston pointed out that the term "foreign currency" is not defined in the Act and that a question has arisen as to whether this term would include gold coins.

It is the Committee's intention that the term "foreign currency" as used in this subsection refers only to those currencies whose worth is determined not primarily by their metallic content, but rather by their value relative to other countries' currencies, as determined on the foreign currency exchange markets of the world. Thus, bullion-valued gold coins such as South African Krugerrands, Austrian Coronas, or Candian Maple Leafs are not considered "foreign currency" for the purpose of new section 4c(f) of the Act.

The Committee next considered three amendments offered by Senator Dixon dealing with the provisions in the bill relating to speculative position limits. S. 2109, as adopted by the subcommittee, expressly recognizes the authority of an exchange to adopt limits on the amount of trading which may be done or positions which may be held by any one person in any futures (or option) contract traded on the exchange. The bill also provides that if the Commission has established speculative limits on any contract, the limits established by an exchange may not be different from the Commission limits except with the approval of the Commission. Senator Dixon's first amendment would allow an exchange to set limits that were lower than Commission-established limits. This amendment was approved without objection.

The second Dixon amendment sought to clarify when criminal penalties would apply to violations of exchange-established speculative limits. Under S. 2109, as reported by the subcommittee, section 4a of

the Act would be amended to provide that it is unlawful for any person to violate an exchange-established speculative limit if that limit has been approved by the Commission. Senator Dixon proposed that failure to comply with an exchange-established speculative limit would be a violation of the Act only if such noncompliance was in furtherance of an attempt to manipulate, corner, or squeeze a market. He explained that his amendment would protect the public interest but also would not subject a person to criminal penalties who had made an honest mistake in exceeding the speculative limit. After discussion of alternative proposals to provide that the criminal penalties of the Act would not apply to violations of exchange-established speculative limits or that the criminal penalties would apply only to those who knowingly violate exchange-established limits, the Committee agreed to amend section 4a to provide that the Act's criminal penalties in section 9(c) are applicable to violations of exchange-established speculative limits only if the violations are committed in furtherance of an attempt to manipulate, corner, or squeeze a market.

The third amendment offered by Senator Dixon would have amended section 4a of the Act to require the Commission, prior to issuing any speculative limit, to conduct a hearing on the record and determine that the limits proposed are necessary to prevent manipulation, corners, or squeezes. In support of his amendment, Senator Dixon argued that all affected groups, whether they be the futures industry, farm groups or consumer groups, should be heard in a hearing that is on the record before the Commission adopts any speculative limits.

Chairman Johnson of the Commission stated that, through interpretation by the courts, the term "hearing on the record" means a true, adjudicatory proceeding that is the same as a full-scale trial, with examination, cross-examination, and the introduction of evidence and exhibits. Chairman Johnson pointed out that the Commission does get comment from interested parties before establishing speculative limits, and that this input is required by the Administrative Procedure Act and the Commission's own rules.

Senator Dixon subsequently revised his amendment to delete the requirements that the hearing be "on the record" and to require that the notice to interested parties and the hearing be held 60 days prior to the establishment of any speculative limit. After considerable discussion in which several Senators expressed concern about the amendment, the amendment was withdrawn. Nevertheless, the Committee contemplates that, before establishing speculative limits under section 4a, the Commission will afford interested persons the opportunity to address the speculative limit proposals under consideration.

Chairman Helms then offered an amendment to clarify the definition of the term "commodity pool operator." In general, the amendment would exempt from the definition of "commodity pool operator" (1) any group of individuals less than five in number, (2) any person regulated under the Investment Company Act of 1940 or any insurance company or any trust department of a bank or trust company, each of which utilizes less than 10 percent of its pooled assets (as initial margins or options premiums) for futures trading and which was not established to conduct business as a commodity pool, (3) any benefit plan that is subject to the provisions of the Employee Retirement Income Security Act of 1974, and (4)

any other person exempted by the Commission. The Chairman stated that the amendment was supported by former CFTC Commissioner Gary Seavers and is similar to a proposal by the Committee on Commodities Regulation of the American Bar Association. The Chairman indicated that adoption of the amendment would make it easier for commercial interests which pool funds for long-term investment in bonds and other long-term interest bearing vehicles to hedge the risk associated with fluctuation in interest rates. The Chairman further stated that, since virtually all the persons or entities to which the exception would apply are regulated by other Federal or State agencies, it is reasonable to take them out of this regulatory mechanism. After discussion as to whether thea mendment may have been too broad and after noting the fact that the Commission intends to review this issue, the amendment was not adopted.

The Committee believes, consistent with the amendment offered by Chairman Helms, that certain entities are not within the intent of the definition of the term "commodity pool operator", as that term is defined in the Act, unless these entities have other attributes or features which would warrant their regulation as a commodity pool operator. Specifically, an entity regulated under the Investment Company Act of 1940 or an insurance company or a bank or trust company acting in its fiduciary capacity and subject to regulation by any State or the United States could ordinarily be excluded from the definition of the term "commodity pool operator," provided that (1) the entity uses commodity futures contracts or options thereon solely for hedging purposes; (2) initial margin requirements or premiums for such futures or options contracts will never be in excess of 5 percent of the fair market value of the entity's assets (in the case of an investment company) or of the assets of any trust, custodial account or other separate unit of investment for which the entity is acting as a fiduciary; (3) the entity has not been and will not be, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodities markets; and (4) the entity will disclose to each prospective participant the purpose of and limitations on the scope of the commodity futures or commodity option trading it conducts for such participants.

Also, a defined benefit plan that is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and is insured by the Pension Benefit Guaranty Corporation, or any fiduciary thereof, ordinarily could be excluded from the definition of the term "commodity pool operator", provided that its commodity futures (or options on futures) trading activity is solely incidental to the conduct of its business as such a plan or as a fiduciary thereof. The Committee understands that such a plan and its fiduciaries are subject to extensive regulation under ERISA. Therefore, while the Commission should retain discretion in this area, the Committee believes that, unless otherwise inappropriate, exemption by rule, regulation, or order from commodity pool operator registration and related requirements, other than antifraud provisions, should generally be granted to these classes of entities.

Chairman Helms offered another amendment relating to commodity pools. The amendment would add a provisio to new subsection (2) to be added by the bill to section 4m of the Act. The amendment would

provide that "the provisions of this Act shall preclude the qualification or substantive regulation of commodity pools under the various laws of the several States dealing with the qualification or regulation of securities or otherwise in those States." Chairman Helms explained that the amendment would clarify existing law by explicitly stating that the Commodity Exchange Act preempts all substantive State regulation of commodity pools under the various laws of those States. If a commodity pool is regulated by both the CFTC and the SEC, additional regulation by the States is neither needed nor desirable. He also stated that the Commission believes that existing law is clear and the amendment is not needed.

After discussion, the Committee decided not to adopt the amendment since the law is clear and the amendment is, therefore, not needed. However, the Committee reiterates that Federal jurisdiction under the Commodity Exchange Act is exclusive vis-a-vis the several States, and that the several States are specifically preempted from the substantive regulation or qualification of commodity pools and commodity pool operators. In 1974 and again in 1978, the Congress expressed its intent that the Commission have exclusive jurisdiction over the substantive aspects of futures trading and that unnecessary and duplicative regulation of the commodities industry be avoided. Notwithstanding this clear expression of congressional intent, however, many State securities administrators insisted or attempted to insist on State qualification of commodity pools under the blue sky laws of their various jurisdictions. In addition, many State regulators have imposed or attempted to impose substantive regulation on commodity pools and commodity pool operators that conflicts with Commission regulatory policy or imposes requirements which the Commission has specifically considered and rejected. Lastly, many State securities administrators now contemplate regulating the timing and method of compensation paid to the commodity pool operator.

The practical effect of this State regulation is to increase the cost to the investing public without any appreciable corresponding benefit. Since all commodity pools are subject to Commission regulation and since certain activities of commodity pools are also subject to both Commission and Securities and Exchange Commission regulation, State regulation of the same activity is clearly duplicative. The Committee notes that it was given the opportunity to restrict the exclusive jurisdiction provision of the Act with respect to State jurisdiction over commodity pools, commodity pool operators, and others during the course of the preparation of the bill and specifically chose not to do so. In light of the foregoing, it should be clear that the several States are specifically preempted from the substantive regulation or qualification of commodity pools and commodity pool operators. Nothing in the Committee's view on this subject, however, limits the powers of the several States under section 6d and proposed section 12(e) of the Commodity Exchange Act.

The Committee further notes that its amendment adding a new subsection (2) to section 4m of the Commodity Exchange Act is intended to clarify the extent to which the 1933 and 1934 Federal securities laws apply to the issuance of securities by commodity pools. Prior to this amendment, there was some confusion as to whether the CFTC's exclusive jurisdiction over accounts, agreements, and trans-

actions involving futures contracts vested it with sole responsibility for the protection of persons who participate in the futures markets through a pool. The amendment is intended to make clear that the rights and remedies of the Securities Act of 1933 and the Securities Exchange Act of 1934 will be available to persons who are offered or who purchase securities issued by a commodity pool.

However, the amendment is not intended to impair the CFTC's exclusive jurisdiction over the operations of a commodity pool in connection with its trading activities. Specifically, the Committee intends that the CFTC will continue to have exclusive jurisdiction to regulate such matters as the trading conducted by commodity pools and the business operations of commodity pools, including the fees charged by futures commission merchants, commodity trading advisors, and commodity pool operators.

The new amendment does not imply that the Investment Company Act of 1940 and the Investment Advisors Act of 1940 are applicable to the activities of commodity pools, commodity pool operators, and commodity trading advisors when such entities or persons purchase commodity futures contracts (or options thereon) based on securities or give advice as to the purchase and sale of futures contracts (or options thereof) based on securities.

By unanimous voice vote the Committee ordered S. 2109, as amended, reported to the Senate.

Section-by-Section Analysis

Short title

Section 1 provides that this Act may be cited as the "Futures Trading Act of 1982".

Definitions

Section 2(1) contains a technical amendment redesignating existing section 2(a)(1) of the Commodity Exchange Act as section 2(a)(1)(A).

Section 2(2) adds a definition to section 2(a)(1) of the Commodity Exchange Act to create a new category of registrant, identified as the "introducing broker" category. In general, this category includes any person engaged in soliciting customers' orders for the purchase or sale of futures contracts, but who does not accept and retain customers' funds, securities, or property to margin futures contracts. The definition excludes an individual who is registered as an associated person of a futures commission merchant. Several conforming amendments are made to other sections of the Act to provide authority for the regulation of the registrants included in this category.

Section 2(3) amends the definition of the term "commodity trading advisor" in section 2(a)(1) of the Act to include only those engaged in the business of advising others as to the value of or the advisability of trading in commodity futures contracts traded on or subject to the rules of any contract market, commodity options authorized under section 4c of the Act, or leverage transactions authorized under section 19 of the Act. This amendment excludes from the definition of the term "commodity trading advisor" those persons who advise others as to the value of cash commodities only, members of the electronic media who give advice solely incidental to the conduct of their busi-

ness or professional and fiduciaries of defined benefit plans subject to the provisions of the Employee Retirement Income Security Act of 1974.

The Commission may include within this definition any person giving advice as to the value of commodities or issuing reports or analyses about commodities, if the Commission determines that the person's inclusion will effectuate the purposes of this provision. The Commission may exclude any person from this definition by rule, regulation, or order, if such person is not within the intent of the definition.

Jurisdictional accord with the Securities and Exchange Commission

Section 3(a) amends redesignated section 2(a)(1)(A) of the Commodity Exchange Act to provide for an exception to the CFTC's exclusive jurisdiction vis-a-vis the Securities and Exchange Commission. This exception is codified in new section 2(a)(1)(B) of the Act.

Section 3(b) amends section 2(a)(1) of the Act to create an explicit exception to the exclusive jurisdiction provision contained in section 2(a)(1). Section 2(a)(1) is amended by adding a new subparagraph (B), designated as 2(a)(1)(B) of the Act. New section 2(a)(1)(B)(i) provides that the Act has no application to and the CFTC shall have no jurisdiction to designate contract markets for options on securities, as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982, including any group or index of such securities, or interest therein or based on the value thereof. New section 2(a)(1)(B)(ii) continues the CFTC's exclusive jurisdiction over futures contracts based on stock indices (or options on such contracts). In approving such futures contracts (or options on such contracts) the CFTC must find that each contract (or option on such contract) meets the following criteria:

(1) Settlement of the contracts must be made in cash or by means other than the delivery, transfer, or receipt of a security. Exempted securities, other than municipal securities, however, may be delivered, transferred, or received in settlement of the contracts.

(2) The contracts may not be readily susceptible to price manipulation nor to causing or being used in the manipulation of the prices of the securities making up the underlying stock index.

(3) The stock index upon which the futures or option contract is based must be constructed from a broad group of securities.

New section 2(a)(1)(B)(iii) requires that the CFTC give the public an opportunity to comment on whether a proposed stock index futures or options contract meets the criteria outlined above and consult with the SEC prior to approving the trading of any futures or option contract based on a stock index. If the SEC objects to the designation of a particular stock index futures or option contract on the grounds that the above criteria are not satisfied, it must be granted an oral hearing before the CFTC. If the CFTC designates a contract for trading over the objections of the SEC, the SEC would have the right to seek judicial review of the CFTC's decision under the provisions of section 6(b) of the Commodity Exchange Act. If a hearing is held in connection with disapproval proceedings of a stock index futures or options con-

tract application, the SEC would be permitted to participate in the hearing as an interested party.

New section 2(a)(1)(B)(iv) provides that no futures contracts based on individual securities (or options on such contracts) may be traded, except futures contracts (or options on such contracts) based on an exempted security as defined in section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 on the date of enactment of the bill and futures contracts (or options on such contracts) approved pursuant to the provisions of new section 2(a)(1)(B)(ii).

Section 3(c) of the bill amends section 4c of the Act to add a new subsection (f). This subsection makes clear that nothing in the Commodity Exchange Act shall be applicable to options contracts based on foreign currencies which are traded on national securities exchanges.

Section 3(d) of the bill amends section 4m of the Act by redesignating section 4m as 4m(1) and adding a new subsection 4m(2). This provision explicitly states that nothing in the Act shall relieve any person of any obligation or duty or affect the availability of any right or remedy available to the SEC or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

Section 3(e) amends section 8a(6) of the Act to permit the Commission to disclose facts relating to transactions or market operations to commodities and securities self-regulatory organizations when such disclosure is necessary or appropriate to effectuate the purposes of the Act. These facts may be disclosed by the recipients only in connection with a self-regulatory action or proceeding.

Personal restrictions

Section 4 deletes section 2(a)(7)(B) of the Act which contains a prohibition on appearances before, or communications to, the Commission by former Commissioners and Commission employees classified as GS–16 or above who hold positions excepted from the competitive service by reason of being of a confidential or policymaking character. The enactment of the Ethics in Government Act of 1978 has made the 1-year bar of representative appearances before, and other communications to, the Commission contained in section 2(a)(7)(B) duplicative of the comparable 1-year bar set forth in title 18, United States Code, section 207(c).

Legislative findings

Section 5 amends the legislative findings contained in section 3 of the Act to modernize the text of the provision, to eliminate certain outdated references to the role of speculators in the futures markets, and to specify that, because transactions in commodity options are in or affect interstate commerce, regulation of commodity options is imperative for the protection of interstate commerce and the national public interest.

Unlawful futures trading; foreign futures

Section 6(1) amends section 4 of the Commodity Exchange Act by redesignating existing section 4 as section 4(a).

Section 6(2) amends redesignated section 4(a) by combining the provisions of current sections 4 and 4h(1) of the Act into a single, simplified provision. Redesignated section 4(a) of the Act specifies that all transactions in commodity futures contracts (other than in contracts which are made on or subject to the rules of a board of trade, exchange, or market located outside the United States) must be entered into or executed on boards of trade, designated by the Commission as contract markets, through members of those contract markets. This provision makes no substantive change in existing law.

Sections 6(3) and 6(4) make technical changes to section 4.

Section 6(5) adds a new subsection (b) to section 4. This provision is applicable only to persons located in the United States who offer and sell futures contracts made or executed on boards of trade, exchanges, or markets located outside the United States. New subsection (b) authorizes the Commission to adopt rules and regulations to proscribe fraud and require that the vendor disclose risk, meet minimum financial standards, make reports, keep specified books and records, safeguard customers' funds, and register with the Commission. The Commission is authorized to promulgate rules and regulations which impose different requirements for different vendors, depending upon the particular board of trade, exchange, or market on which the vendor's futures contracts are made or executed. The Commission may not adopt any rule or regulation under this provision which (1) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market; or clearinghouse for such board of trade, exchange, or market, or (2) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or its clearinghouse.

Speculative limits

Sections 7(1), 7(2), and 7(3) make amendments to section 4a of the Commodity Exchange Act to authorize the Commission to set speculative limits by rule or regulation, as well as by order.

Section 7(4) strikes an obsolete reference to the Commodity Futures Trading Commission Act of 1974 in section 4a of the Commodity Exchange Act.

Section 7(5) amends section 4a of the Act to make speculative limits applicable to those persons registered under the new "introducing broker" category to the same extent as such limits are applicable to futures commission merchants and floor brokers in current law.

Section 7(6) amends section 4a to add a new subsection 4a(5) to the Act. This provision makes explicit that exchanges may set speculative limits on the amount of trading which may be done or positions which may be held in options or futures contracts by any person trading on or subject to the rules of a contract market or board of trade. In situations in which the Commission has fixed limits for any futures contract under section 4a of the Act or for any commodity option under section 4c, limits adopted by contract markets or boards of trade may not be higher than the limits fixed by the Commission, unless the Commission approves such higher limits. This provision also provides that it is unlawful for any person to violate the speculative limits adopted by contract markets or boards of trade if those limits have been approved by the Commission. A violation of such a limit constitutes a violation

of the Act, except that the criminal provisions of section 9(c) of the Act would not apply unless the speculative limit violation was in furtherance of an attempt to manipulate, corner, or squeeze a market.

Repeal of the ban on options trading in agricultural commodities

Section 8(1) amends section 4c of the Commodity Exchange Act to end the ban on options trading in agricultural commodities specified in section 4c(a) of the Act by striking out clause (B) of subsection (a) and redesignating clause (C) of subsection (a) as clause (B).

Sections 8(2) and 8(3) make technical amendments to sections 4c(b) and 4c(c) of the Act to include options on agricultural commodities in these sections and to conform these sections with section 4c(a), as amended by section 8(1) of the bill.

Introducing broker; registration requirement

Sections 9(1) and 9(2) amend section 4d of the Commodity Exchange Act to make it unlawful for any person to act as an introducing broker as that term is defined in section 2(a)(1) of the Act, as amended, without being registered as such with the Commission.

Section 9(3) amends section 4d(2) of the Act to make clear that, because introducing brokers are not permited to accept and retain customers' funds, the provisions pertaining to customers' margin funds and the safeguarding of these funds apply only to futures commission merchants and not to introducing brokers.

Registration procedure; technical amendment

Section 10(1) amends section 4f of the Commodity Exchange Act to specify the procedures by which an introducing broker will register with the Commission. This provision also makes a technical amendment, striking out language requiring the listing of the names of correspondents and agents of futures commission merchants on the registration application forms submited by futures commission merchants.

Section 10(2) amends section 4f of the Act to specify that no person shall be registered as an introducing broker unless the person meets such minimum financial requirements as the Commission may prescribe through the issuance of regulations.

Reports, books, and records

Section 11(1) amends section 4g of the Commodity Exchange Act to specify that introducing brokers must make such reports and keep such books and records in the form and manner and for such period as may be required by the Commission. These books and records shall be open to inspection by any representatives of the Commission or of the United States Department of Justice.

Section 11(2) amends section 4g of the Act to specify that introducing brokers shall maintain daily trading records for each customer such that the customers's trades can be identified in the records of the contract market and clearinghouse on which the trades were executed and cleared. Such records shall be available for inspection under the provisions of section 4g(1).

Technical amendments; misrepresentation of status

Section 12(1) amends section 4h(1) of the Commodity Exchange Act by striking out the provisions proscribing the offer and sale of commodity futures contracts which are executed or consummated

other than through a member of a contract market. These provisions have been incorporated in redesignated section 4(a) of the Act, as amended.

Sections 12(2), 12(3), and 12(4) extend the prohibitions against misrepresenting contract market membership or futures commission merchant registration status to misrepresentation of any registration status or misrepresentation of any agent or representative status.

Recordkeeping conformed to current system

Section 13 amends section 4i of the Commodity Exchange Act to state explicitly that the Commission and the Department of Justice may inspect the books and records of any trader whose trades or positions in any cash commodity or commodity futures contracts equal or exceed the levels set by the Commission, regardless of whether the trader is required by the Commission to file reports of his trading activity. The Commission retains the authority to require the filing of reports regarding such transactions or positions. Under the amendment, large traders will continue to keep books and records relating to their trading activity in futures and cash transactions and to make information relating to their trading activity available for inspection.

Registration; associated person status

Section 14(1) amends section 4k(1) of the Commodity Exchange Act to require any person who is associated with an introducing broker in any capacity which involves the solicitation or acceptance of customers' orders (other than in a clerical capacity) or the supervision of any person or persons so engaged, to register as an associated person of that introducing broker. Persons registered as associated persons of futures commission merchants or as floor brokers, introducing brokers, or futures commission merchants need not also register as associated persons of introducing brokers. The references in section 4k(1) to agents of futures commission merchants have been striken. Such persons are now required to register as introducing brokers by the provisions of section 4d(1) of the Act, as amended.

Section 14(2) amends section 4k of the Act by redesignating subsection (2) as subsection (4).

Section 14(3) amends section 4k by adding a new subsection (2). This amendment requires that any partner, officer, employee, consultant, or agent of a commodity pool operator who solicits funds, securities, or property for participations in commodity pools or who supervises persons so engaged register as an associated person of the commodity pool operators. This provision also makes it unlawful for any commodity pool operator to permit any person to become or remain associated with such pool operator if the commodity pool operator knew or should have known that the person was not registered with the Commission or that the person's registration had expired, had been suspended (and the suspension period had not yet expired), or had been revoked. Any person who is registered as a floor broker, introducing broker, futures commission merchant, commodity pool operator, or as an associated person of another category of registrant under this section need not also register as an associated person of a commodity pool operator. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

Section 14(4) amends section 4k of the Act by adding a new subsection (3). This amendment requires that any partner, officer, employee, consultant, or agent of a commodity trading advisor who solicits discretionary accounts or who supervises persons so engaged register as an associated person of the commodity trading advior. This provision also makes it unlawful for any commodity trading advisor to permit any person to become or remain associated with such trading advisor if the commodity trading advisor knew or should have known that the person was not registered with the Commission or that the person's registration had expired, had been suspended (and the suspension period had not yet expired), or had been revoked. Any person who is registered as a floor broker, introducing broker, futures commission merchant, commodity trading advisor, or as an associated person of another category of registrant under this section need not also register as an associated person of a commodity trading advisor. The Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

Section 14(5) amends section 4k(4), as so redesignated, to provide that the registration of associated persons of (1) futures commission merchants, (2) introducing brokers, (3) commodity pool operators, and (4) commodity trading advisors shall expire at such time as the Commission shall fix by rule, regulation, or order. The amendment strikes out references to the registration period currently in effect for associated persons of futures commission merchants and references to registration renewal procedures. Registration procedures for all registrants are contained in section 8a of the Act, as amended by the bill.

Section 14(6) amends section 4k of the Act by adding a new subsection (5). This amendment makes it unlawful for any registrant to permit a person to become or remain associated with it as an associated person if the registrant knew or should have known of facts that are set forth as statutory disqualifications in section 8a(2) of the Act, as amended by the bill, unless the registrant has notified the Commission of such facts and the Commission has determined that such persons should be registered or temporarily licensed.

Conforming amendment

Section 15 amends section 4n of the Commodity Exchange Act by striking out subsections (5) and (6) in their entirety. These provisions have been incorporated in section 8a, as amended by the bill.

Extension of antifraud provision

Section 16 amends section 4o of the Commodity Exchange Act by extending the existing antifraud provision applicable to commodity trading advisors and commodity pool operators to the associated persons of commodity trading advisors and commodity pool operators.

Extension of authority regarding proficiency examinations

Section 17 amends section 4p of the Commodity Exchange Act to extend the Commission's existing authority to establish fitness standards and adopt proficiency examinations to all registrants and applicants under the Act. Currently, this authority is limited to futures commission merchants, floor brokers, and associated persons of futures commission merchants and floor brokers.

Contract market rules

Section 18(1) amends section 5a(8) of the Commodity Exchange Act, which now requires each contract market to enforce certain bylaws, rules, regulations, and resolutions ("rules"), made or issued by it or by the governing board or any committee thereof which have been approved by the Commission under section 5a(12) of the Act, and to revoke and not enforce those rules disapproved by the Commission. Under the amendment, the contract market must also enforce rules, if required to do so by any Commission rule, regulation, or order (such as Commission rule 1.53), and those rules which have become effective under the amended provisions of section 5a(12) of the Act.

Section 18(2) amends section 5a(11) of the Act to remove certain limitations currently imposed by that section on the arbitration or other procedures which must be provided by contract markets for settlement of customers' claims and grievances against contract market members or employees. Specifically, the $15,000 limit on claims which may be arbitrated in contract market arbitration proceedings is deleted. Also, the provision requiring an agreement of the parties for compulsory payments is deleted. In addition the definition of "customer" has been broadened to include any person for or on behalf of whom a member of a contract market effects a transaction on such contract market, except another member of that contract market.

Section 18(3) amends section 5a(12) of the Act, which governs contract market rule submissions and Commission approval and disapproval of those rules. Under revised section 5a(12) a contract market must submit for prior Commission approval all bylaws, rules, regulations, and resolutions ("rules") made or issued by the contract market which relate to terms and conditions, as defined by the Commission, in contracts of sale to be executed on or subject to the rules of such contract market, except those rules relating to the setting of levels of margin. The contract market must submit all other rules to the Commission (except those relating to the setting of levels of margin), but may place these rules into effect 10 days after their receipt by the Commission, unless the contract market submitting the rule requests that the Commission review and approve the rule or the Commission notifies the contract market that it has determined to review such rule for approval. This determination may not be delegated to any employee of the Commission.

If the Commission institutes proceedings to determine whether a rule should be disapproved, it must provide the contract market with written notice of the grounds for disapproval, including the specific provisions of the Act or Commission rules which would be violated. If the Commission does not approve or institute disapproval proceedings with respect to any rule within 180 days after receipt of a rule (or such longer period as the contract market may agree to) or conclude a disapproval proceeding within 1 year after receipt (or such longer period as the contract market may agree to), the contract market may put the rule into effect.

Finally, the amendment permits the Commission to publish a notice of a rule the Commission has determined is of major economic significance (rather than the entire text of the rule) in the Federal Register. The amendments do not affect the ability of a contract market, in an

emergency as defined by the Commission, to put a rule into effect on a temporary basis without prior approval.

Contract market designation procedures

Section 19 amends section 6 of the Commodity Exchange Act to provide that the Commission must either approve or deny an application of a board of trade for designation as a contract market within 1 year from the date of the filing of the application. If the Commission notifies the board of trade that the application is materially incomplete and specifies the deficiencies, the running of the 1-year period is stayed from the time of such notification until the application is resubmitted in completed form. This provision also requires the Commission to specify the grounds for denial of an application.

Appeals; conforming amendment

Section 20(1) amends section 6(b) of the Commodity Exchange Act to conform that section to reflect the addition of new categories of registrants. Under the amendment the Commission could commence enforcement proceedings against, and impose sanctions on, any person registered with the Commission.

Section 20(2) amends section 6(b) of the Act to provide that a person aggrieved by a Commission order denying registration may appeal that order to the United States court of appeals for the circuit in which the petitioner's principal place of business is located; as set forth in its registration application. Under the present provisions of section 6(b), appeal is limited to the circuit in which the petitioner is "doing business."

Restraining orders, injunctions, writs of mandamus

Section 21 amends the restriction on *ex parte* injunctive orders contained in section 6c of the Commodity Exchange Act to permit the Commission to obtain an *ex parte* restraining order which prohibits any person from (1) destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect any books, records, or other documents, or (2) withdrawing, transferring, removing, dissipating, or disposing of funds, assets, or other property.

Confidentiality provisions; disclosure

Section 22(1) amends section 8(a) of the Commodity Exchange Act to extend the general prohibition on Commission disclosure to (1) records containing or based on confidential information or proprietary information that would not customarily be disclosed to the public by the persons from whom it was obtained, unless disclosure is necessary to obtain public comment and (2) data and information concerning or obtained in connection with the investigation of any person.

Section 22(2) amends section 8(b) of the Act to expand the situations under which the Commission may disclose data or information concerning or obtained in any investigation, as well as that which would separately disclose the market positions, business transactions, trade secrets, or names of customers. In addition to currently authorized disclosures in connection with congressional proceedings and in administrative or judicial proceedings brought under the Act, disclo-

sure would be permitted in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under the Act and in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under the Bankruptcy Code.

Section 22(3) amends section 8(e) of the Act by explicitly authorizing the Commission to disclose any information obtained in the administration of the Act to any department or agency of the United States Government.

The bill also adds a new provision authorizing the Commission to disclose any information obtained in the administration of the Act to any agency or department of a State or of a foreign government, or political subdivision thereof. State and local government agencies and departments may not disclose any information furnished by the Commission under this provision except in connection with an adjudicatory action or proceeding that may be instituted under the Act or under the laws of the State or local government to which the State or local government or any department or agency thereof is a party. Commission disclosure of such information to agencies or departments of foreign governments or political subdivisions thereof is only permitted where the Commission is satisfied that the information will not be disclosed by the foreign government agency or department except in connection with an adjudicatory action or proceeding brought under the laws of the foreign government or political subdivision thereof, to which the foreign government, political subdivision thereof, or any department or agency thereof is a party.

Section 22(4) makes a technical amendment to sections 8(f) and 8(g) of the Act by redesignating these sections as 8(h) and 8(i), respectively.

Statutory disqualification from registration; delegation of registration functions

Section 23(1) amends section 8a(1) of the Commodity Exchange Act to authorize the Commission to register the following new categories of commodity professionals: introducing brokers, associated persons of introducing brokers, associated persons of commodity pool operators, and associated persons of commodity trading advisors. Also, the provisions of existing section 8a(4) authorizing the Commission to establish reasonable fees for registrations and renewals thereof have been incorporated into section 8a(1).

Section 8a(1) is also amended to authorize the Commission to grant a temporary license for up to 6 months to any applicant for registration pursuant to such rules, regulations, or orders as the Commission may adopt. A temporary license does not confer any right to continue in business if the licensee is unfit for registration with the Commission.

Section 22(5) adds new sections 8(f) and (g) to the Act. New section 8(f) requires the Commission to furnish registration information maintained by the Commission on any registrant to any department or agency of any State or political subdivision pursuant to a reasonable request. The Commission also is required to furnish such information without a request if the Commission determines that such

information may be appropriate for use by any department or agency of a State or political subdivision thereof.

New section 8(g) provides that the Commission shall disclose information in its possession pursuant to a subpoena or summons only if a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information, if the address is known to the Commission, and 14 days have elapsed from the date of such mailing.

Section 23(2) amends section 8a(2) of the Act to establish a system of statutory disqualifications in connection with registration with the Commission. Under this provision, the Commission is authorized upon notice, but without a prior hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, and to suspend or to place restrictions upon the registration of any person subject to an enumerated disqualification listed in amended section 8a(2). In addition, the Commission is authorized to revoke the registration of any person subject to such disqualification with an appropriate hearing. It is contemplated that the Commission will develop procedures pursuant to section 8a(2) which will satisfy the constitutional requirements of due process of law. Consistent with current law, an appeal of any Commission decision refusing, conditioning, suspending, revoking, or placing restrictions upon registrations under section 8a(2) may be had in an appropriate United States court of appeals, pursuant to the provisions of section 6(b) of the Act.

The enumerated disqualifications which may serve as a statutory bar to registration or which may result in suspension or revocation of, or conditional or restricted, registration of any person include:

Subparagraph (A): A prior registration of such person with the Commission in any capacity is currently suspended or has been revoked.

Subparagraph (B): Application for registration of such person in any capacity has been refused under the provisions of section 8a(3) of the Act within 5 years preceding the filing of the application.

Subparagraph (C): Such person is permanently or temporarily enjoined by court order, including an order based on a settlement agreement to which the Commission or any Federal or State agency is a party, from (i) acting as a Commission registrant, as a specified securities industry professional, or as an affiliated person or employee of such persons, or (ii) engaging in transactions or advisory services concerning commodity interests subject to Commission regulation or concerning securities. An existing registration may not be revoked solely on the basis of a temporary court order.

Subparagraph (D): Conviction of such person, within 10 years preceding the application or at any time thereafter, of a felony which involves: (i) transactions or advice concerning any commodity interest subject to Commission regulation or a security, (ii) the business of any Commission registrant or specified securities industry professional or an affiliated person or employee of the foregoing, (iii) embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) the violation of any of the following provisions of title 18 of the United States Code: section 152 (con-

cealment of assets in a bankruptcy proceeding, making a false or fraudulent oath in a bankruptcy proceeding, perjury in connection with a bankruptcy proceeding, *etc.*), section 1341, 1342, 1343 (mail frauds and swindles, the use of fictitious names and addreses, frauds perpetrated through use of the wires, radio, or television), chapter 25 (counterfeiting and forgery), chapter 47 (fraud and false statements), chapter 95 (racketeering), and chapter 96 racketeer influenced and corrupt organizations).

Subparagraph (E): A finding, within 10 years preceding the filing of the application or at any time thereafter, by any court of competent jurisdiction, by the Commission or by any Federal or State agency or by a settlement to which the Commission or any Federal or State agency or other governmental body is a party that such person (i) has violated the Act, the Federal securities laws, or any similar State or foreign statute, or the regulations thereunder, or the rules of the Municipal Securities Rulemaking Board, which involves the same offenses as those enumerated in subparagraph (D)(iii), or (ii) has willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person.

Subparagraph (F): Such person is subject to an outstanding order of the Commission denying trading privileges to such person on any contract market, denying, suspending or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from associating with a registrant under the Act, with a member of a contract market, or with a member of a registered futures association.

Subparagraph (G): Such person willfully made any material false or misleading statement or omission in a registration application as to the existence of any section 8a(2) disqualification.

Subparagraph (H): Refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a disqualification listed in section 8a(2). The term "principal" is defined in this subparagraph for purposes of both sections 8a(2) and (3) to mean a general partner in the case of a partnership, or an officer, director, or beneficial owner of at least 10 percent of the voting shares of a corporation, and any other person which the Commission determines to be in a position to exercise a controlling influence over the activities of such person which are the subject of regulation by the Commission.

Section 23(3) redesignates paragraph (3) of section 8a of the Act as new paragraph (4) and deletes existing paragraph (4).

Section 23(4) adds a new section 8a(3) (existing section 8a(3) having been redesignated as section 8a(4)). New section 8a(3) of the Act authorizes the Commission to refuse to register or to register conditionally any person, after opportunity for hearing, based upon certain conditions, acts or omissions which are enumerated in the fourteen subparagraphs of that section. Consistent with existing law, pending final determination under section 8a(3), registration shall not be granted and an appeal of any Commission decision to refuse or to condition registration made under section 8a(3) may be had in an appropriate United States court of appeals, pursuant to the provisions of section 6(b) of the Act.

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The factors listed in section 8a(3) which may provide the basis for a refusal to register or a conditional registration of any person include:

Subparagraph (A): A finding by the Commission or by any court of competent jurisdiction that such person has violated or consented to findings of a violation of any provision of the Act, or any rule, regulation, or order thereunder, other than those set forth in section 8a(2), or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision.

Subparagraph (B): A finding by any court of competent jurisdiction or by any Federal or State agency, or by a settlement to which any Federal or State agency or other governmental body is a party, that such person (i) has violated the Federal securities laws or any similar State or foreign statute, or the regulations thereunder, or the rules of the Municipal Securities Rulemaking Board, or (ii) has willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person.

Subparagraph (C): Such person failed reasonably to supervise another person, who is subject to such person's supervision and who violates the Act, any of the statutes enumerated in subparagraph (B) (Federal securities laws), or any of the rules, regulations, or orders thereunder. No person, however, will be considered to have failed reasonably to supervise another person, if (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person reasonably discharged its supervisory duties through such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with.

Subparagraph (D): Conviction of such person of a felony other than a felony enumerated in section 8a(2)(D) within 10 years preceding the filing of the application or at any time thereafter, or conviction of *any* felony (including those in section 8a(2)(D)) more than 10 years preceding the filing of the application.

Subparagraph (E): Conviction of such person within 10 years preceding the filing of the application or at any time thereafter of a misdemeanor of the nature described in section 8a(2)(D).

Subparagraph (F): Debarment of such person by any agency of the United States from contracting with the United States.

Subparagraph (G): Such person willfully made any material false or misleading statement or omission in a registration application (other than a misstatement or omission under section 8a(2)(G)) or in a report required to be filed with the Commission by the Act or the regulations thereunder, or in a proceeding before the Commission.

Subparagraph (H): A plea of *nolo contendere* by such person to criminal charges of felonious conduct, or a conviction in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction.

Subparagraph (I): In the case of an applicant for registration in any capacity for which there are minimum financial requirements under the Act or Commission regulations, such person has failed to establish compliance with such minimum financial requirements.

Subparagraph (J) : Such person is subject to an outstanding order denying, suspending or expelling the person from membership in a contract market, a registered futures association, or any other self-regulatory organization (such as a stock exchange or the National Association of Securities Dealers), or barring or suspending such person from associating with any member or members of such contract market, association, or self-regulatory organization.

Subparagraph (K) : A finding by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by settlement to which any Federal or State agency or other governmental body is a party, that such person (i) has violated any statute or any rule, regulation, or order thereunder where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) has willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person.

Subparagraph (L) : Such person has associated with him another person, and knows, or in the exercise of reasonable care should know, of facts regarding the other person that are set forth as disqualifications in section 8a(2), unless the person has notified the Commission of these facts and the Commission has determined that the other person should be registered or temporarily licensed.

Subparagraph (M) : There is other good cause.

Subparagraph (N) : Any principal, as defined in section 8a(2)(H), of such person has been or could be refused registration.

Section 23(5) amends redesignated section 8a(4) of the Act (previously section 8a(3)) to authorize the Commission to place restrictions upon (in addition to suspending or revoking) the registration of any person registered under the Act if cause exists under section 8a(3) which would warrant a refusal of registration. This section also amends redesignated section 8a(4) to authorize suspension or revocation of the registration of an introducing broker (in addition to a futures commission merchant) who knowingly accepts orders for futures transactions from any person denied trading privileges on a contract market. The section also makes it clear that a person may appeal from a decision to suspend, revoke, or place restrictions upon registration under this provision in the manner provided under section 6(b) of the Act.

Section 23(6) makes a technical amendment to section 8a.

Section 23(7) adds a new section 8a(10) pursuant to which the Commission may authorize any person (such as a registered futures association) to perform any portion of the registration functions under the Act, in accordance with rules approved by the Commission, and subject to the applicable registration provisions of the Act.

Judicial review of commission's actions with respect to market emergencies

Section 24 amends section 8a(9) of the Commodity Exchange Act by providing for limited judicial review of any Commission emergency action. Such actions shall be subject to review only in the United States court of appeals for the circuit in which the party seeking review resides or has its principal place of business, or the United States

Court of Appeals for the District of Columiba circuit. The scope of review shall be limited to an examination of the information before the Commission at the time the emergency determination was made. The reviewing court may not enter a stay or order of mandamus unless a panel of the court determines, after notice and hearing, that the action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This section also specifically confirms that the Commission may, as an emergency action, direct a contract market to set temporary levels of margin in a futures contract.

Certain prohibited transactions

Section 25(1) expands section 9(a) of the Commodity Exchange Act to make it a felony for any person registered or required to be registered under the Act, or any employee or agent thereof, to embezzle, steal, purloin, or convert to his own use with criminal intent money, securities, or property having a value of more than $100 which belongs to customers, clients, or pool participants.

Section 25(2)(A) amends section 9(d) of the Act to make it a felony for any Commission member or employee or agent of the Commission to engage in leverage transactions. This amendment conforms the Act to the Commission's Code of Conduct (see 17 C.F.R. § 140.735–4(b)(1) (1981)).

Section 25(2)(B) expands the exemptions from the provisions of section 9(d) of the Act prohibiting investment transactions in actual commodities to include any transaction entered into by a trustee of a trust established by a Commissioner or Commission employee, over which such Commissioner or employee exercises no control, if the transaction (i) is entered into solely to hedge against adverse price changes in connection with permitted farming or ranching operations or (ii) is for the lease of oil or gas or other mineral rights or interests owned by the Commissioner or employee.

Section 25(2)(C) also exempts from the provisions of section 9(d) of the Act relating to investment transactions in actual commodities a transaction by a Commission member or employee to buy or sell a United States Government security, a certificate of deposit or other similar financial instrument, provided that the transaction is effected other than through an instrument regulated by the Commission and no nonpublic information is used.

Section 25(3) amends section 9(e) of the Act, consistent with amended section 9(d), to make it a felony for any person to use in any leverage transaction nonpublic information acquired by or from a Commissioner or an employee of the Commission by virtue of his position and for any Commissioner or employee of the Commission to impart such information to assist another person in a leverage transaction.

Reauthorization; off-exchange jurisdiction

Section 26(1) amends section 12(d) of the Commodity Exchange Act to authorize the appropriation of funds to administer the Act through the fiscal year ending September 30, 1984.

Section 26(2) adds a new section 12(e) to the Act which provides that nothing in the Act supersedes or preempts (1) criminal prosecution under any Federal criminal statute; (2) the application of any Federal or State law or regulation to any commodity transaction which

is not conducted on or subject to the rules of a contract market or (except as otherwise specified by the Commission) any foreign board of trade or which is not a dealer option or leverage transaction subject to regulation by the Commission under sections 4c and 19 of the Act; or (3) the application of any Federal or State law or regulation to any person who shall fail or refuse to obtain registration or designation under the Act. The Commission is also explicitly authorized to refer such matters subject to such other Federal or State law to the department or agency administering the same for such investigation or proceedings as that department or agency deems appropriate.

Secondary liability

Section 27(1) eliminates the reference to administrative proceedings contained in section 13(a) of the Commodity Exchange Act so as to provide that persons may be held responsible for aiding and abetting violations of the Act or Commission rules or regulations in judicial (as well as administrative) proceedings brought under the Act.

Section 27(2) redesignates subsection (b) of section 13 of the Act as subsection (c).

Section 27(3) adds a new section 13(b) to the Act which provides that any person who directly or indirectly controls any person who has violated any provision of the Act or the rules, regulations, or orders issued thereunder may be held liable for such violations in any action brought by the Commission to the same extent as such controlled person, if the controlling person did not act in good faith and directly or indirectly induced the act or acts constituting the violation. The Commission is explicitly charged with the burden of proving that the controlling person did not act in good faith and directly or indirectly induced the act or acts constituting the violation.

Reparations procedure

Section 28 amends section 14 of the Commodity Exchange Act to revise the statuory procedure for reparations. In general, these amendments delete or revise several procedural requirements under existing law so as to permit the Commission to fashion new procedures to facilitate and expedite the handling of claims before the Commission.

Section 28(1) deletes existing subsections (b), (c), and (e) of section 14 of the Act. Subsection (b) deals with investigation of reparations complaints, service of the complaints, and hearings on reparations complaints. Subsection (c) provides for hearings on reparations complaints if the damages claimed exceed $5,000. Subsection (e) provides procedures for determination of violations of the Act, issuance of an order directing payment, and issuance of an order directing payment where there is a partial admission of liability.

Section 28(2) redesignates subsections (d), (f), (g), (h), and (i) of section 14 of the Act as subsections (c), (d), (e), f), and (g), respectively.

Section 28(3) amends section 14(a) of the Act to delete the authority of the current Act providing for reparations claims against persons who are required to be registered with the Commission but who are not so registered. Under the amendment, reparations claims would be limited to violations of the Act or Commission regulations by persons registered under the Act. Nonregistered persons who aid and abet

violations committed by registrants would be subject to reparations jurisdiction, however.

Section 28(4) adds a new subsection (b) to section 14 of the Act authorizing the Commission to promulgate such rules, regulations, and orders as are necessary or appropriate for the efficient and expeditious administration of the reparations provision. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe or otherwise condition the form, nature, and scope of, among other things, pleadings, discovery, motion practice, hearings, and rights of appeal.

Section 28(5) corrects a cross reference in subsection (d) of section 14 of the Act from "(g)" to "(e)".

Section 28(6) amends subsection (f) of section 14 of the Act, as redesignated (previously subsection (h)) to provide that the trading privileges of a customer against whom an award was rendered on a respondent's counterclaim shall be terminated if payment of the award is not made within the specified time period. Existing law permits trading privileges to be terminated only when the respondent fails to pay an award rendered on the customer's claim.

Technical amendment

Section 29 makes a technical amendment to section 16(d) of the Commodity Exchange Act to add "market positions" to the information the Commission may not disclose in market reports except as provided in section 8, thus conforming this section to section 8 of the Act.

Registered futures associations; fingerprinting members

Section 30(1) amends section 17(b)(4)(E) of the Commodity Exchange Act to allow a futures association registered with the Commission to require that an applicant for membership with such an association be fingerprinted and that such fingerprints be submitted to the Attorney General for appropriate processing. The amendment specifies, notwithstanding any other provision of law, that such an association may receive all the results of such identification and processing from the Attorney General thus ensuring that arrest information which does not contain dispositional information may be so received.

Section 30(2) amends section 17(b)(10) of the Act to remove certain limitations currently imposed by that section on the arbitration or other customer complaint resolution procedures which must be provided by a registered futures association for settlement of customers' claims, and grievances against a member or employee of the association. Specifically, the $15,000 limit on claims which may be arbitrated in these proceedings is deleted. Also, the provision requiring an agreement of the parties for compulsory payments is deleted. In addition, the definition of "customers" is revised to exclude another member of the association. These changes conform the provisions of this paragraph to those in section 5a(11) relating to contract markets.

Section 30(3) corrects a cross reference in section 17(h) of the Act from subsection (k) to subsection (i).

Section 30(4) amends section 17(j) of the Act, which principally deals with Commission approval of changes in or additions to the rules of any registered futures association. The amendment requires a registered futures association to submit to the Commission any change in

or addition to its rules. The registered futures association may put such new rules or rule changes into effect within 10 days of the Commission's receipt of their submission unless the registered futures association requests approval or the Commission notifies the registered futures association of its intention to review the rules for approval. Rules are to be approved within 30 days of receipt, unless the Commission notifies the association of its inability to complete approval or review within such period of time.

Transaction fee study

Section 31 requires the Commission to conduct a study of the effect of imposing fees on the purchase and sale of futures contracts, commodity options, and leverage transactions subject to regulation under the Commodity Exchange Act to offset the costs of regulating such transactions. The study is to include consideration of the effect of a transaction fee on market liquidity, determination of the relative portion of the Commission's appropriation which benefits the public and that which benefits market participants, and an evaluation of the impact of a transaction fee on producers, processors, manufacturers, and other hedgers. A detailed report on the results of the study, including any legislative recommendations, is to be submitted to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture not later than January 1, 1984.

Administration Views

I.

On February 1, 1982, Philip McBride Johnson, Chairman of the Commodity Futures Trading Commission, transmitted to Chairman Helms of the Committee proposed legislation to reauthorize the Commission. That legislation was introduced as S. 2109. By letter of May 6, 1982, Chairman Johnson transmitted the Commission's view on S. 2109, as reported by the Committee. These two letters read as follows:

Commodity Future Trading Commission,
Washington, D.C., February 1, 1982.

Hon. Jesse Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: The Commodity Futures Trading Commission is pleased to transmit to you proposed legislation which we are recommending to Congress in connection with its consideration of the Commission's reauthorization. We are today transmitting to you three documents: (1) a bill to amend the Commodity Exchange Act, (2) the changes in existing law contemplated by this legislation and (3) the legislation which will implement the jurisdictional agreement between the Commission and the Securities and Exchange Commission, as well as an accompanying joint explantory statement. Within three days, we will also be transmitting to you a section by section

analysis of the bill to amend the Commodity Exchange Act which the Commission is recommending.

The Commission is concurrently transmitting this legislation and materials to the House Committee on Agriculture and the Office of Management and Budget.

Sincerely,

PHILIP MCBRIDE JOHNSON, *Chairman.*

COMMODITY FUTURES TRADING COMMISSION,
Washington, D.C., May 6, 1982.

HON. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Commodity Futures Trading Commission congratulates you and the members of the Committee for the hard work and sound judgment reflected in S. 2109 as reported by the Committee. The Commission also commends Senator Richard E. Lugar for the professional and thorough hearings he provided the Commission and interested members of the public on S. 2109 and the Commission's reauthorization. The Commission also wishes to acknowledge the substantial time and effort contributed to this process by the staff of the Committee, particularly Messrs. George S. Dunlop, J. Robert Franks, Terrance J. Wear and Minority Counsel and Staff Director, Carl P. Rose.

The Commission supports S. 2109, as reported by the Committee, which would reauthorize the Commission and strengthen and improve upon certain provisions of the Commodity Exchange Act. S. 2109 is a further indication of the Committee's long standing recognition of the important role of the futures markets and the need for a strong, independent Commission with the necessary statutory tools to oversee those markets, to provide efficient and prompt services to the public and to ensure that vigorous action will be taken against those who would violate the law.

In particular, the Commission is pleased with the Committee's efforts to codify the jurisdictional accord reached with the Securities and Exchange Commission. Enactment of the amendments to the Act contained in S. 2109, together with those being considered for the federal securities laws, should permit the marketplace to fulfill the growing need for financial trading instruments. Similarly, the Commission endorses the Committee's decision to repeal the total statutory ban on agricultural commodity options and to authorize the Commission to permit these options to be traded in a strictly regulated environment. These options may prove to be a highly important marketing and trading vehicle for the agricultural community.

The Commission is also pleased with the emphasis S. 2109 places on law enforcement, both by the Commission and the States. The Commission's enforcement capability will be enhanced by the explicit authority contained in the bill to proceed in court against aiders and abettors of violations and to obtain ex parte orders freezing assets and books and records. Moreover, the authority of the States to apply their laws against those who would ignore federal requirements and to ob-

tain otherwise confidential information from the Commission to assist their investigations and case preparation should encourage an active enforcement role by the States. In addition, the new direct regulatory authority provided by S. 2109 over employees and other personnel of commodity trading advisors and pool operators and over introducing brokers and their employees should increase the public's confidence in the commodity professionals with whom they deal.

The Commission's ability to utilize its limited resources more efficiently has also been increased by S. 2109. The provisions establishing a streamlined contract market rule approval process, a scheme of statutory disqualifications for entrants into the industry and a new framework in which the Commission may refashion the reparations process should all help the Commission to provide better service to the public.

The Commission does have some concern, however, over certain of the provisions of S. 2109. The Commission hopes that the members of the Committee and the Senate will study carefully the following comments and either reconsider or clarify these provisions. We offer these comments consistent with our mutual desire to provide a sound statutory scheme for the fair and effective regulation of the futures markets.

1. Transaction Fees; Reauthorization Period. The Commission continues to advocate adoption of its proposal for transaction fees contained in Section 26 of S. 2109, as introduced. The Commission's proposal would in large measure accomplish the purpose of the transaction fee study called for by Section 31 of S. 2109, as reported by the Committee, while at the same time allowing the Commission to solve in part its perennial resource problems. For the reason given in our responses to questions from Senators Lugar and Dole that appear in the Committee's hearing record, the Commission remains confident that its transaction fee proposal will not impede development of the National Futures Association. Our confidence in this conclusion is buttressed by the fact that SEC transaction fees and the National Association of Securities Dealers, Inc. have coexisted for many years.

In any event, the Commission believes the transaction fee question to be unrelated to the length of the Commission's reauthorization. S. 2109, however, provides for a two-year reauthorization, apparently to coincide with our oversight committees' review of the transaction fee study called for by the bill. That review could—and should—take place, however, independently of yet another reauthorization process in only two years. Indeed, a more focused and detailed study of the transaction fee issues could be accomplished, if the resources and attention of both the Committees and the Commission were not diverted by the demands of another comprehensive reauthorization process.

2. Speculative Limits. The Commission supports those provisions of S. 2109 which confirm the ability of exchanges to set speculative trading and position limits and which make a breach of those limits a violation of the Act, so as to permit the Commission to take appropriate enforcement action. The Commission is concerned, however, over the limitation in new Section 4a(5) which would make the criminal provisions of Section 9(c) of the Act inapplicable to any violation of exchange limits unless the violation was in furtherance of an attempt to manipulate, corner or squeeze a market. In the Commission's view, criminal prosecution of this offense should require only that the government prove the requisite criminal intent to violate the exchange

limit. Criminal prosecution may be the only effective recourse when, for example, speculative limit violations are committed repeatedly and deliberately by the same person. The Commission's ability to assure the integrity of speculative limits under these circumstances would be seriously impaired if a showing of manipulative amibitions is also required. A trader's reason to violate the limits might be far less ambitious; he may intend to exceed exchange limits simply to acquire additional trading profits during a normal market movement.

3. Contract market rule review. S. 2109 would streamline the Commission's rule approval process under Section 5a(12) of the Act. The amendment recognizes that contract market rules concerning contract terms and conditions must be submitted for Commission approval and that all "other rules" must be submitted to the Commission and may be placed into effect within ten days, unless the contract market requests Commission approval or the Commission determines to review the rule for approval. The Commission would suggest either an additional amendment to Section 5a(12) or clarification that the Commission be authorized to exempt classes of these "other rules" from the prior submission requirement. This would permit the Commission, for example, to exempt by regulation ministerial or administrative-type rules from having to be submitted to the Commission before they might be implemented by the contract market.

4. Contract Market Designation Procedures. S. 2190 would impose a one year time period in which the Commission must either approve or deny an application for designation as a contract market. The bill also provides that if the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one year period is stayed. The Commission suggests that this provision be modified or the Committee clarify its intent that the new procedures do not apply to contract market designation applications that may be pending before the Commission on the effective date of S. 2109 and that if an application is incomplete, the running of the one year time period shall not recommence until the Commission notifies the board of trade that the application has been resubmitted in completed form.

5. Commission Emergency Authority. Although the Commission did not and does not support any amendment to Section 8a(9) that would provide for judicial review of its emergency actions, the Commission is pleased that the committee has recognized the importance and necessity of prompt and effective Commission emergency action by providing only a limited form of judicial review. In particular the Commission notes that S. 2109 confines review to a court of appeals and precludes the issuance of any stay or order of mandamus against the Commission unless a panel of the court has made the required statutory findings. The Commission understands the reference to a "stay or order of mandamus" to include any preliminary or permanent injunction of the Commission's emergency action. Nevertheless, the Commission would suggest that S. 2109 be amended or the Committee report explicitly reflect its intent in this regard.

6. Controlling Person. S. 2109, as introduced, contained the Commission's proposal for imposing secondary liability on controlling persons. While the Committee has also approved this concept in new Section 13(b) of the Act, the Commission is concerned that the Committee's version of S. 2109 is not the best way to achieve the purposes that

are to be served by the controlling person provision. The Commission notes that under both the Commission's proposal and the Committee's provision the Commission would have to prove that a person violated the Act and that another person controlled the activities of the violator. Under the Committee's bill, however, the Commission must also bear the burden of showing that the controlling person did not act in good faith and directly or indirectly induced the act or acts constituting the violation. Thus the Commission in effect will be forced to prove the absence of an affirmative defense. Having established a violation and control, however, the Commission believes that the controlling person should bear the burden of showing an absence of bad faith and a lack of inducement of the acts constituting the violation, as he is required to do under the Securities Exchange Act of 1934. Requiring the Commission to show not only that a violation occurred, not only that a person was in a controlling position, but also that that person did not act in good faith and in fact that he induced the violation, wil greatly diminish the value of this provision as a supplemental enforcement tool and may actually impose a heavier burden of proof on the Commission that it currently bears under the aiding and abetting provision contained in Section 13(a) of the Act. Thus, in order for the controlling person provision to enhance the Commission's enforcement tools, the Commission urges that the Committee's version be amended either to require the controlling person to prove as affirmative defenses a lack of bad faith and of inducement or, at a minimum, to require only that the Commission show *either* that the controlling person acted in bad faith *or* induced the violation.

7. Registered Futures Associations. S. 2109 incorporates the Commission's proposal that it could authorize any person, including a registered futures association, to perform any of the Commission's registration functions. The Commission had also proposed, however, that it be empowered to *require* a registered futures association to perform that function with respect to its membership. S. 2109, as reported by the Committee, however, does not include this latter provision. The Commission would urge that it be included in S. 2109 in order to assure that registered futures associations in fact will perform this important self-regulatory function if required to do so.

Very truly yours,

PHILIP MCBRIDE JOHNSON, *Chairman.*

II.

In letters of March 12, 1982 and March 22, 1982, to Chairman Helms of the Committee, Assistant Secretary of the Treasury Roger W. Mehle set forth the Administration's position in support of the reauthorization of the Commission. Those letters are as follows:

DEPARTMENT OF THE TREASURY,
Washington, D.C., March 12, 1982.

HON. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to express the Administration's position on the reauthorization of the Commodity Futures Trading Commission (CFTC).

After careful consideration at the sub-Cabinet and Cabinet levels, the Administration recommends:

1. Reauthorizing the CFTC for a fixed period of at least four years;
2. Offsetting the costs of the CFTC through user fees without discouraging membership in the National Futures Association;
3. Retaining the CFTC's exclusive regulatory jurisdiction over national exchange trading and pool operators;
4. Authorizing the CFTC to share information with State governmental authorities in connection with legal actions or investigations conducted by States; and
5. Incorporating the resolution of the SEC/CFTC jurisdictional dispute approved by Chairmen Shad and Johnson in the CFTC reauthorization bill.

These recommendations are consistent with the provisions of S. 2109 and H.R. 5447 as introduced at the request of the Chairman of the Commodity Futures Trading Commission.

I respectfully request that a copy of this letter be included in the appropriate records of the CFTC reauthorization hearings recently conducted by the Agriculture Committee's Subcommittee on Agricultural Research and General Legislation. This letter is also being transmitted to the Chairman and ranking minority member of the Subcommittee. Thank you for your cooperation on this matter.

Sincerely,

ROGER W. MEHLE.

DEPARTMENT OF THE TREASURY,
Washington, D.C., March 22, 1982.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is intended to clarify a point in my March 12 letter to you setting forth the Administration's position on the reauthorization of the Commodity Futures Trading Commission.

I am concerned that my comments regarding user fees could be misinterpreted. Some of the recent statements of representatives of the commodity futures industry imply that any CFTC user charge would discourage membership in the National Futures Association. I want to make it clear that the Administration does not share this view. The CFTC user charge proposal was carefully designed to avoid that outcome--the transaction fee for members is only one half the amount for non-members. This should encourage NFA membership. Furthermore, the proposed user fee of six cents a side for member transactions is only a small fraction of fees currently charged by exchanges and security dealers.

For the foregoing reasons, I want to make it clear that the Administration strongly supports the CFTC user charge proposal and urges that it be favorably considered by the Congress without amendment. In this regard, the President's budget for fiscal year 1983

contemplates that these fees will completely offset the costs of CFTC operations.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program, and that enactment of the user fees proposal would be in accord with the program of the President.

Sincerely,

ROGER W. MEHLE.

III.

Following markup of S. 2109 by the Subcommittee on Agricultural Research and General Legislation, Senator Lugar, Chairman of the Subcommittee, received the following letter from David A. Stockman, Director of the Office of Management and Budget, expressing the Administration's concern over failure of the Subcommittee to include a user charge proposal in the bill:

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 30, 1982.

HON. RICHARD G. LUGAR,
U.S. Senate,
Washington, D.C.

DEAR DICK: This is to advise you of our strong concern over the failure of the Senate Subcommittee on Agricultural Research and General Legislation to include this Administration's user charge proposal for the Commodity Futures Trading Commission (CFTC) in the bill as reported out of your subcommittee.

This Administration views this proposal as an essential part of its overall budget strategy. We see absolutely no justification whatsoever for the general taxpayer to shoulder the cost of the special benefits conferred upon the commodity futures market by the programs of the CFTC.

For the foregoing reasons, I must advise you that the Administration could not support enactment of the CFTC reauthorization bill without a user charge provision which would be effective upon enactment.

Accordingly, I would urge you to reconsider the action of your Subcommittee and concur with the Administration's proposal.

Sincerely,

DAVID A. STOCKMAN, *Director.*

COST ESTIMATE

I.

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates the cost of carrying out the provisions of the bill to be $21.1 million for fiscal year 1983 and $21.5 million for fiscal year 1984. The cost estimates provided by the Congressional Budget Office were the basis for the Committee's estimate. No estimate is made for fiscal years 1985 through 1987 since the bill provides only a 2-year authorization. However, the Commit-

tee estimates that if the Commodity Exchange Act were extended for fiscal years 1985 through 1987 the cost of carrying out the Act in those years would only be slightly higher than the estimate of costs for fiscal year 1984.

II.

The cost estimate prepared by the Congressional Budget Office reads as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 6, 1982.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2106, the Futures Trading Act of 1982.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2109.
2. Bill title: Futures Trading Act of 1982.
3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, March 31, 1982.
4. Bill purpose: S. 2109 provides for the authorization of appropriations to carry out the activities of the Commodity Futures Trading Commission (CFTC) through 1984. It also makes a number of changes affecting CFTC jurisdiction, registration requirements, and enforcement procedures. In addition, the CFTC would be required to study and report to the Congress on the effect of imposing a transaction fee to offset the cost of regulatory transactions under its jurisdiction.

The President has requested an appropriation of $23.0 million in 1983 and $23.3 million in 1984 to carry out the activities of the CFTC. The proposed 1983 budget also recommends user fees be collected to cover the full cost of the CFTC regulatory operations. Fiscal year 1982 appropriations to date for the CFTC are $19.9 million.

5. Cost estimate:

Estimated authorization level:

Fiscal year:	*Millions*
1983	$21.1
1984	21.5
1985	----
1986	----
1987	----

Estimated outlays:

Fiscal year:	*Millions*
1983	18.2
1984	21.0
1985	3.4
1986	----
1987	----

The costs of this bill fall within budget subfunction 376.

6. Basis of estimate: For purposes of this estimate, CBO's baseline projections were assumed for the estimates of authorization level in 1983 and 1984, since no specific authorization level was provided in the bill. Outlays reflect historical spending patterns.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary B. Maginniss.

10. Estimate approved by:

JAMES L. BLUM.
Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 2109.

CFTC/SEC accord

Implementation of the CFTC/SEC accord as contained in S. 2109 will have a significant regulatory impact. Under the provision of the accord the CFTC continues to have exclusive jurisdiction over futures and options on futures involving exempted securities, other than municipal securities. However, futures on individual corporate bonds or other nonexempted securities are prohibited. At present no such futures are traded.

S. 2109 further provides that the trading of options on foreign currencies on a national securities exchange is not subject to the provisions of the Commodity Exchange Act. Thus, options directly on foreign currencies may be traded on both commodity and stock exchanges. In addition, S. 2109 provides that the CFTC shall not exercise jurisdiction over options directly on securities, including any group or index thereon or interest therein.

However, futures on stock indices (and options thereon) will be permitted if they meet the statutory criteria set forth in the bill. One of these criteria concerns cash settlement. This provision is consistent with current CFTC practices and should allow stock-index contracts to function more efficiently by avoiding the potentially high transaction costs of physical delivery. Cash settlement should also minimize the possibility of disruptions of the related securities markets or futures market problems such as market congestion or squeezes. Similarly, the requirement that the stock-index futures contracts must be based on a broad group of securities lowers the probability of price manipulation of the futures market through any attempt to manipulate the underlying stocks. The Commission designated the first stock-index futures contract in February 1982 and two additional contracts on two other exchanges were designated during April 1982.

The impact of these provisions of S. 2109 should be beneficial to the commodity and financial markets since following the resolution of long-standing jurisdictional questions commodities and securities exchanges will be free to offer new and innovative risk-management instruments. Increased certainty should also increase confidence in the

markets, and the agreement, by creating a closer working relationship between the CFTC and SEC, should foster greater confidence in the agencies' role in monitoring these markets.

Speculative limits

At present, section 4a(1) of the Act gives the Commission the discretion to fix limits on the number of futures contracts any person may trade or control to prevent market disruptions which are the result of excess speculation. The Commission recently determined that speculative position limits should be established for all markets that have listed futures contracts for trading and accordingly adopted regulation 1.61 which provides that the exchanges should act in the first instance to adopt rules to prevent excessive speculation. During February 1982, the Commission received speculative limit proposals for approximately 75 futures contracts submitted by 11 exchanges.

The amendments to section 4a(1) of the Act contained in S. 2109 confirm the exchanges' authority to set speculative limits on futures, as well as on any options traded on futures exchanges. The amendments also specify that an exchange's limit may be no higher than the Commission's limit, absent Commission approval. In addition, S. 2109 makes a violation of exchange limits a violation of the Act, to ensure that the Commission may enforce speculative limits adopted by the exchanges and approved by the Commission.

This provision should aid in obtaining compliance with speculative limits from persons who are not members of an exchange by making explicit that they are subject to sanctions under the Act. Thus, the provision should help prevent futures market disruptions caused by excessively large speculative trading or positions and should aid the Commission and the exchanges in enforcing these measures.

Contract market rule approvals

The bill amends the existing provisions of the Act to streamline the Commission's procedures for reviewing contract market rules. Under the current Act, exchanges must submit for Commission approval prior to implementation all proposed rules and rule changes which relate to the terms and conditions of futures contracts and other trading requirements (except temporary emergency rules and those relating to the setting of levels of margin). In addition, the current statute permits the Commission to exempt certain types of operational and administrative rules from the requirement of Commission approval prior to implementation. During fiscal year 1981 the Commission approved approximately 625 new rules and rule amendments and also reviewed approximately 525 rules which it determined were operational or administrative in nature.

Under S. 2109, only rules relating to contract terms and conditions required Commission approval prior to implementation, and the Commission must complete the review of all rules within 180 days of their submission. All other rules may be implemented 10 days after submission to the Commission unless the contract market requests prior approval or the Commission determines to review the rule.

These amendments to the Act should decrease the number of exchange rules which require prior approval of the Commission, and the time limit on the review process will assure that the Commission is responsive to the requirements of the industry.

Contract market designation

The Commission has designated approximately 38 futures contracts during the 3 fiscal years (beginning with 1979) since its prior reauthorization, with 22 of these designations being completed during fiscal year 1981. In some cases, however, the contract market designation process has been excessively time consuming, with some contract reviews requiring over 2 years.

Under S. 2109, the Commission must act within 1 year on a contract market designation application unless the application is incomplete. This requirement will assure more timely review of proposed futures contracts and will make approved contracts available for trading on a more expedited basis.

Foreign futures

S. 2109 clarifies the Commission's existing jurisdiction to regulate persons located in the United States who sell futures contracts traded on or subject to the rules of boards of trade or exchanges located outside the United States. Among other things, the bill would permit the Commission to require such persons to register in an appropriate capacity and to maintain appropriate records and file certain reports.

There are no reliable data on the number of individuals or firms which regulations adopted under this provision would affect. However, there is reason to believe that many of the individuals or firms now vending foreign futures in the United States are already registered with the Commission as futures commission merchants or commodity trading advisors. Therefore, although S. 2109 contains a clearer expression than the current law concerning the regulation of the sale of foreign futures, these amendments are not expected to have a major impact on legitimate vendors and sales of foreign futures. In instances where a foreign exchange competes in the U.S. market with domestic futures contracts, the adoption of regulations governing foreign futures should diminish any competitive advantage which a less extensively regulated foreign product may have over domestic futures contracts. These amendments do not affect the Commission's current authority to prosecute frauds perpetrated on United States residents committed by persons located in or outside the United States, its territories, or possessions.

Registration

The bill revamps current law by establishing parity of registration requirements, streamlining registration procedures, and providing a framework for delegation of the registration function. These changes are intended to promote the evolution of self-regulation in the commodities industry and to permit the Commission to move to an oversight role in connection with the registration of commodity professionals. As a result, these changes in the Commission's registration procedures are expected to have significant regulatory impact. At the end of fiscal year 1981 Commission registrants included the following: 383 futures commission merchants; 11,781 principals of futures commission merchants, 997 agents of futures commission merchants, 40,771 associated persons of futures commission merchants, 4,476 floor brokers, 1,774 commodity trading advisors, 4,383 principals of commodity trading advisors, 882 commodity pool operators, and 2,539 principals of commodity pool operators.

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The bill would amend the Act to extend existing registration requirements to include all persons who handle customer funds or who influence or advise customers as to the investment of those funds. Specifically, the bill would require the partners, officers, employees, consultants, and agents of commodity pool operators who solicit pool participants or who supervise such persons, to register as associated persons of commodity pool operators. Similarly, the bill would require the personnel of commodity trading advisors who solicit discretionary accounts or who supervise such persons to register as associated persons of commodity trading advisors. Because such individuals have not previously been actively regulated by the Commission, there are no figures available as to the number of persons who would be affected by this requirement.

However, the Committee believes that this feature of the bill, for which there was considerable industry support, will not impose unfair burdens on the persons affected. While the personal privacy of new Commission registrants will be affected since they will be required to furnish certain limited information and fingerprints to the Commission, these are requirements which apply to current registrants of the Commission who perform similar functions. As a result, these changes should make the Commission's registration program more equitable and consistent by requiring all persons who are essentially functioning in the same manner as associated persons of futures commission merchants to register as associated persons.

The bill would also establish a system of "statutory disqualifications" which would enable the Commission to register fit persons and to remove unfit persons more promptly. The Commission processes thousands of applications for registration and re-registration each year. For example, during fiscal year 1981 the Commission's staff completed 14,814 initial applications and 22,740 renewal applications, and at the end of that fiscal year there were a total of 51,682 registrants compared with 44,158 at the end of the previous fiscal year, an increase of 17 percent. By enumerating the most important bases for finding applicants or registrants unfit for registration, the bill would reduce the amount of time and resources which applicants and registrants (as well as the Commission staff) currently devote to preparing and processing applications. Additionally, by eliminating the need to provide hearings to persons who are manifestly unfit for registration, the bill provides for more expeditious disposition of most registration cases, which will benefit the industry as well as the individuals or firms involved.

In this connection, in keeping with the Committee's desire to promote the evolution of self-regulation and to assure responsibility by registrants for their employees and associates, the bill would require that reasonable inquiry into the background of such persons be made by employers who are registered. The Committee believes that this responsibility is consistent with prudent business practices and as such should not create unwarranted burdens. Moreover, the assumption of such responsibility by registrants for their employees and other personnel has already been required to some extent by Commission rules which become effective July 1, 1982.

Further, the Committee recognizes that full fitness checks require considerable time. To reduce the initial waiting period associated with

registering under the current law, the bill would authorize the Commission to grant a provisional license to applicants for up to 6 months. By permitting an apparently qualified applicant to begin work or to conduct business prior to final completion of a full registration review, the bill would foster competition by facilitating entry into the industry, especially by small business. It is contemplated that such licenses could be conditioned to expire automatically if the fitness check developed facts about the applicant which constitute statutory disqualifications for registration. This provision of S. 2109 would also afford the Commission additional flexibility in its disposition of registration applications. By authorizing registration to be granted on a conditional basis, appropriate applicants may be permitted to conduct business, subject to certain restrictions where, at present the registration of such applicants would be precluded.

Finally, the bill would provide for the performance by any person of any portion of the Commission's registration functions, in accordance with rules approved by the Commission and subject to the Act. Currently, the Act provides for such a delegation only with respect to associated persons. Thus, the bill would enable the Commission to delegate the processing of registration applications to a registered futures association, thereby reducing direct governmental involvement and promoting industry self-regulation. In connection with its recent registration, the National Futures Association has already indicated its readiness to assume a portion of such registration functions.

Introducing brokers

Under the current law, some futures commission merchants operate through networks of "agents" whose main function is to procure business for the futures commission merchant. At the end of fiscal year 1981 about one-half were not registered in any capacity with the Commission. At the present time approximately 10 percent of all futures commission merchants employ the services of 80 percent of all agents.

Under S. 2109, such agents would be required to register as "introducing brokers." Their salesmen, in turn, would be required to register as "associated persons of introducing brokers," just as a futures commission merchant's branch office personnel are presently required to register with the Commission as associated persons.

The bill requires the registration of "agents" as introducing brokers because such persons deal with commodity customers and, thus, have the opportunity to engage in abusive sales practices or otherwise to violate the Act. A registration requirement would insure that such individuals or firms would be subject to the same fitness requirements that apply to other Commission registrants who engage in such activities and to other competency requirements as well.

The bill contemplates that "introducing brokers" function in most respects as futures commission merchants except that they may not accept any money, securities, or property (or extend credit in lieu thereof). Therefore, the bill would empower the Commission to establish disclosure, recordkeeping, registration, minimum financial, and other requirements for introducing brokers comparable to the regulations presently in place for futures commission merchants.

Under S. 2109, persons soliciting customer orders for futures commission merchants may be registered as introducing brokers or as associated persons of futures commission merchants, so that the bill does not place unfair burdens on individuals who do not wish or who are unable to maintain significant capital. S. 2109 assures regulatory parity by making persons performing the same functions subject to similar requirements; the bill also promotes customer protection by clarifying that persons handling orders for commodity trades cannot escape responsibility for their actions for lack of adequate capital.

Agricultural options

S. 2109 would repeal the 1936 ban of options on those domestic agricultural commodities enumerated in section 2(a)(1) of the Act prior to 1974 and would permit the trading of such options under a regulatory framework similar to that involving nonenumerated commodities. Before the Commission would be authorized to approve trading in agricultural options it would be required to meet the statutory provisions of section 4c(c) including documentation of the Commission's ability to regulate the options successfully and an evaluation of its present pilot program in commodities options. In this connection, regulation of agricultural options would place additional demands on Commission resources in at least three areas: assessment of the impact of option trading on the agricultural sector and Government programs such as agricultural support programs, review of exchanges' proposed contract submissions for options on agricultural commodities, and expansion of the Commission's surveillance activities to agricultural options.

Options could provide a number of unique advantages in managing the price risks of producing and marketing agricultural commodities. A major advantage identified by proponents of options lies in their limited-risk characteristics—that is, the maximum loss on a purchased option is the premium paid to buy the option. Payment of this premium entitles the option purchaser to buy (call) or sell (put) the underlying commodity at a fixed price (the option's strike price) on or before a date in the future. However, if such purchase or sale of the commodity at the option's strike price would be unprofitable, the option may be abandoned by its purchaser without further obligation. As a result, an option may be used to assure a maximum or minimum price for an anticipated purchase or sale of a commodity in the future ("price insurance") or to protect the value of an uncertain future level of commodity production or requirements (management of "quantitative uncertainty") as a known cost. This limited-risk characteristic, and its related limitation of cash-flow difficulties which often accompany hedging positions in futures markets, should be especially beneficial to small-scale producers who do not currently make extensive use of futures markets.

The likely participation of the farm sector, brokerage houses, and members of the public in this program is difficult to assess at this time due to a lack of relevant studies or trading experience with comparable option contracts. The economic impact of trading commodity options will be more easily assessed after the existing options pilot program has been operating for several months.

Large trader reporting

At present, the Act requires futures traders as well as futures commission merchants to maintain books and records and report to the Commission whenever a trader trades or holds positions in excess of the reportable level. S. 2109 amends the Act to provide that in the event that the CFTC eliminates routine reporting by the large traders themselves, such persons must nevertheless continue to keep and allow inspection of books and records concerning their futures and related cash transactions.

The Commission has acted by rulemaking to discontinue the routine filing of about 400,000 reports each year by large traders. This decrease in the reporting burden became effective January 1, 1982 and should result in substantial savings for both the trading public and the Commission, including a savings of over 15 clerical positions at the Commission. Adequate surveillance of the commodities markets in the absence of these routine reports is predicated on the Commission's ability to continue requiring large traders to meet recordkeeping and inspection requirements. S. 2109 would thus conform section 4i of the Act to the Commission's current practice.

Reparations

The Commission's reparations program has been beset with problems related to a significant backlog of claims and the assessment of awards which are not collectable. During fiscal year 1980 there were 747 reparations claims docketed, while during 1981, 818 claims were docketed. During fiscal year 1981 initial decisions were handed down for 201 reparations claims while 175 defaults were recorded during that period.

The amendments to the Act relating to the reparations program include deletion of certain statutory procedural provisions which have proven cumbersome and limiting coverage of the program to respondents who are registered with the Commission. The bill also encourages claimants to use other forums to reduce the demand for adjudication under the reparations program.

The Committee believes that the streamlining of the reparations program permitted under S. 2109 would facilitate a more expeditious handling of reparations claims for which there is a significant probability of collecting assessed awards. As a result, the Committee believes that a revitalized reparations program would serve the purpose for which the reparations program was created—the swift, inexpensive settlement of claims against persons registered with the Commission. To the extent that this objective is accomplished, the Committee bill would also reduce the unnecessary regulatory and paperwork burden on persons who would otherwise be filing for uncollectable reparations claims.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE COMMODITY EXCHANGE ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Commodity Exchange Act."

SEC. 2. (a)(1)(*A*) For the purposes of this Act, "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. The word "commodity" shall mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85-839, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in: *Provided*, That the Commission shall have exclusive jurisdiction, *except to the extent otherwise provided in subparagraph (B) of this paragraph*, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated pursuant to section 5 of this Act or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 19 of this Act: *And provided further*, That, except as hereinabove provided, nothing contained in this section shall (i) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (ii) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws.

Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State. Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade. The term "future delivery," as used herein, shall not include any sale of any cash commodity for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association,

partnership, corporation, or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia. The words "cooperative association of producers" shall mean any cooperative association, corporate or otherwise, not less than 75 per centum in good faith owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with an Act of Congress of February 18, 1922 (U.S.C. 1934 ed., title 7, sec. 291 and 292), as now or hereafter amended, including any organization acting for a group of such associations and owned or controlled by such associations, provided that business done for or with the United States of America, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with said Act of Congress of February 18, 1922.

The words "member of a contract market" shall mean and include individuals, associates, partnerships, corporations, and trusts owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon. The words "futures commission merchant" shall mean and include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. *The term "introducing broker" shall mean any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.* The words "floor broker" shall mean any person who, in or surrounding any "pit", "ring", "post", or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market. The words "the Commission" shall mean the Commodity Futures Trading Commission established under paragraph (2) of this subsection. [The term "commodity trading advisor" shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities; but does not include (i) any bank or trust company, (ii) any newspaper reporter, newspaper columnist, newspaper editor, lawyer, accountant, or teacher,

(iii) any floor broker or futures commission merchant, (iv) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation including their employees, (v) any contract market, and (vi) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession.] *The term "commodity trading advisor" shall mean any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract for future delivery of a commodity made or to be made on or subject to the rules of any contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19 of this Act, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing; but such term does not include (i) any bank or trust company, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: Provided, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: Provided further, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.* The term "commodity pool operator" shall mean any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

(B) Notwithstanding any other provision of law—

(i) This Act shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 2(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any interest therein or based on the value thereof.

(ii) This Act shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty") and transactions involving, and may designate a board of trade as a contract market in, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): Provided, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery unless the board of trade making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities; and

(III) Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.

(iii) Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contract (or option on such contract) meets the minimum requirements set forth in subparagraph (ii) hereof, and shall consult with the Securities and Exchange Commission with respect to such designation. If, within fifteen days following the close of the public comment period, the Securities and Exchange Commission shall object to the designation of a board of trade as a contract market in such contract (or option on such contract) on the ground that any minimum requirement of subparagraph (ii) hereof is not met, the Commission shall afford the Securities and Exchange Commission an opportunity for an oral hearing, to be transcribed, before the Commission, and shall give appropriate weight to the views of the Securities and Exchange Commission. Such oral hearing shall be

held after the public comment period, prior to Commission action upon such designation, and not less than thirty nor more than forty-five days after the close of the public comment period, unless both the Commission and the Securities and Exchange Commission otherwise agree. In the event that such an oral hearing is held and the Securities and Exchange Commission fails to withdraw its objections, and the Commission issues an order designating a board of trade as a contract market with respect to any such contract (or option on such contract), the Securities and Exchange Commission shall have the right of judicial review of such order in accordance with the standards of section 6(b) of this Act. In the event that, pursuant to section 6 of this Act, there is a hearing on the record with respect to such application for designation, the Securities and Exchange Commission shall have the right to participate in that hearing as an interested party.

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act of 1933 or section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982); or except as provided in subparagraph (ii) hereof, any group or index of such securities or any interest therein or based on the value thereof.

(2)(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall seek to establish and maintain a balanced Commission, including, but not limited to, persons of demonstrated knowledge in futures trading or its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights and interests covered by this Act. Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commission first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall

serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other other legal duties and functions as the Commission may direct.

(5) The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6)(A) Except as otherwise provided in this paragraph and in paragraphs (4) and (5) of this subsection, the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer,

employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7)[(A)] No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this Act during his term of office, nor shall he participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

[(B) No Commissioner or employee of the Commission classified as a GS–16 or higher in a position excepted from the competitive service by reason of being of a confidential or policymaking character shall, for a period of one year beginning on the last day of service as such Commissioner or employee—

[(i) make any appearance before the Commission, or

[(ii) make any written or oral communication to the Commission, or any Commissioner or employee of the Commission, on behalf of any person (other than the United States) on any particular matter that is before the Commission,

if such last day of service is more than four months after the date of enactment of this subparagraph. The restrictions in this subparagraph shall not apply to an appearance or response under a subpena issued by the Commission, or any matter of an exclusively personal and individual nature.]

(8)(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keeping such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation as a contract market involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate a board of trade as a contract market based on such application until forty-five

days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, suspension, revocation, or emergency action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for Government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(9)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(10) The Commission shall have an official seal, which shall be judicially noticed.

(11) The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(b) For the purpose of this Act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and byproducts thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale

is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purposes of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

[Sec. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of commodities on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in commodities and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein.]

Sec. 3. Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and byproducts thereof in interstate commerce; the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce; such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodities and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; the transactions and prices of commodities on such boards of trade are susceptible to excessive speculation and can be manipulated, controlled, cornered, or squeezed, to the detriment of the producer or the consumer and the persons handling commodities and the products and byproducts thereof in interstate

commerce, rendering regulation imperative for the protection of such commerce and the national public interest therein. Furthermore, transactions which are of the character of, or are commonly known to the trade as, "options" and which are or may be utilized by commercial and other entities for purposes of risk shifting are in interstate commerce or affect such commerce and the national economy, rendering regulation of such transactions imperative for the protection of such commerce and the national public interest.

SEC. 4. (*a*) It shall be unlawful for any person to [deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of any commodity for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in any commodity or the products or byproducts thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, except, in any of the foregoing cases, where such contract is made by or through a member of a board of trade which has been designated by the Commission as a "contract market", as hereinafter provided,] *offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States or its territories or possessions for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possession) unless: (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a contract market for such commodity, (2) such contract is executed or consummated by or through a member of such contract market,* and [if] (*3*) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each [board] *contract market* member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the United States Department of Justice.

(*b*) *The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, reporting, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer and sale of any contract of sale of a commodity for future delivery which is made or to be made on or subject to the rules or a board of trade, exchange, or market located outside the United States, its territories or possessions. Such rules and regulations may impose*

different requirements for such persons depending upon the particular foreign board of trade, exchange, or market on which such contracts are made. No rule or regulation may be adopted by the Commission under this subsection that (1) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, or (2) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or its clearinghouse.

SEC. 4a. (1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by *rule, regulation, or* order, proclaim and fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or different trading limits for buying and selling operations, or different limits for the purposes of subparagraphs 2(A) and (B) of this section, or from exempting transactions normally known to the trade as "spreads" or "straddles" or "arbitrage" or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word "arbitrage" in domestic markets shall be defined to mean the same as a "spread" or "straddle". The Commission is authorized to define the term "international arbitrage".

(2) The commission shall, in such *rule, regulation, or* order, fix a reasonable time (not to exceed ten days) after the [order's] promulgation[:] *of the rule, regulation, or order* after which, and until such order is suspended, modified, or revoked, it shall be unlawful for any person—

(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the *rule, regulation, or* order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such *rule, regulation, or* order for or with respect to such commodity; or

(B) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such *rule, regulation, or* order.

(3) No *rule, regulation, or* order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission [within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974] by *rule, regulation, or* order consistent with the purposes of this Act.

(4) This section shall apply to a person that is registered as a futures commission merchant, *introducing broker*, or [as] a floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

(5) Nothing in this section shall prohibit or impair the adoption by any contract market, or by any other board of trade licensed or designated by the Commission, of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities traded on or subject to the rules of such contract market or such board of trade: Provided, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not be higher than the limits fixed by the Commission except with the approval of the Commission. It shall be unlawful for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery, or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: Provided, That the provisions of section 9(c) of this Act shall not apply unless the violation was in furtherance of an attempt to manipulate, corner, or squeeze a market.

SEC. 4b. It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging

any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) to cheat or defraud or attempt to cheat or defraud such other person;

(B) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

Nothing in this section or in any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month, from executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

SEC. 4c. (a) It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) if such transaction is, is of the character of, or is commonly known to the trade as, a "wash sale", "cross trade", or "accommodation trade", or is a fictitious sale; *or*

[(B) if such transaction involves any commodity specifically set forth in section 2(a) of this Act, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, and if such transaction is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or]

[(C)] *(B)* if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission.

(b) No person shall offer to enter into, enter into, or confirm the execution of, any transaction [subject to the provisions of subsection (a) of this section] involving any commodity regulated under this Act[, but not specifically set forth in section 2(a) of this Act, prior to the enactment of the Commodity Futures Trading Commission Act of 1974,] which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe [within one year after the effective date of the Commodity Futures Trading Commission Act of 1974 unless the Commission determines and notifies the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture that it is unable to prescribe such terms and conditions within such period of time]: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *And provided further*, That the Commission may set different terms and conditions for different markets.

(c) Notwithstanding the provisions of subsection (b) of this section, no person may, after the enactment of the Futures Trading Act of 1978, offer to enter into, enter into, or confirm the execution of any commodity option transaction involving any commodity regulated under this Act [but not specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974,] until (1) the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry documentation of its ability to regulate successfully such transactions, including a copy of the Commission's proposed rules and regulations, and (2) the expiration of thirty calendar days of continuous session of Congress after the date of such transmittal. The Commission is not precluded from transmitting, at any time, documentation relating to its ability to regulate such transactions regarding individual commodities, classes of commodities, or regulation of such transactions on specific boards of trade. Nothing in this subsection shall affect any rights or obligations arising out of any transactions subject to the provisions of this subsection entered into, or the execution of which was confirmed, prior to October 1, 1978: *Provided*, That this prohibition shall not apply to any transaction expressly permitted under rules or regulations prescribed by the Commission, before or after the date of enactment of the Futures Trading Act of 1978, to be offered to be entered into, entered into, or confirmed, in which the purchaser is a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or byproducts thereof.

(d) Notwithstanding the provisions of subsection (c) of this section—

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided*, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section if—

(A) the grantor is a person domiciled in the United States who—

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least $5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below $5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who—

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission. The Commission may permit persons not domiciled in the United States to grant options under this subsection under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

(e) The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.

(f) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant *or introducing broker* in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless—

(1) such person shall have registered, under this Act, with the Commission as such futures commission merchant *or introducing broker* and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, *if a futures commission merchant*, whether a member or nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however*, That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be com-

mingled and deposited in the same account or accounts with any bank or trust company or with the clearinghouse organization of such contract market, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearinghouse organization of such contract market or with any member of such contract market, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage and other charges, lawfully accruing in connection with such contracts and trades: *Provided further*, That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further*, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

SEC. 4e. It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall have registered, under this Act, with the Commission as such floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. (1) Any person desiring to register as futures commission merchant, *introducing broker*, or [as] floor broker hereunder shall be registered upon application to the Commission, which application shall be made in form and manner to be prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged, including, in the case of applications of futures commission merchants *and introducing brokers*, the names and addresses of the managers of all branch offices [and of all correspondents and agents engaged in soliciting or accepting on behalf of such applicant any orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any board of trade], and including also the names of [its] *the* officers and partners, if a partnership, and of [its] *the* officers, directors, and stockholders, as the Commis-

sion may direct, if a corporation. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to his business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked [after notice and hearing as prescribed in this Act] *pursuant to the provisions of this Act.*

(2) Notwithstanding any other provisions of this Act, no person desiring to register as futures commission merchant *or as introducing broker* shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligations as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market and conforms to minimum financial standards and related reporting requirements set by such contract market in its bylaws, rules, regulations or resolutions, and approved by the Commission as adequate to effectuate the purposes of this paragraph (2).

SEC. 4g. (1) Every person registered hereunder as futures commission merchant, *introducing broker*, or floor broker shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customers thereof, in commodities for future delivery on any board of trade in the United States or elsewhere; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

(2) Every clearinghouse and contract market shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

(3) Floor brokers, *introducing brokers*, and futures commission merchants shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (2).

(4) Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission. Reports shall be made from the records maintained at such times and at such places and in such form as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures.

(5) Before the beginning of trading each day, the exchange shall, insofar as is practicable and under terms and conditions specified by the Commission, make public the volume of trading on each type of contract for the previous day and such other information as the Com-

mission deems necessary in the public interest and prescribes by rule, order, or regulation.

(6) Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different clearinghouses, contract markets, and exchanges when such determinations are warranted in the judgment of the Commission.

SEC. 4h. It shall be unlawful for any person[—

[(1) to conduct any office or place of business anywhere in the United States or its territories for the purpose of soliciting or accepting any orders for the purchase or sale of any commodity for future delivery, or for making or offering to make any contracts for the purchase or sale of any commodity for future delivery, or for conducting any dealings in commodities for future delivery, that are or may be used for—

[(A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or

[(B) determining the price basis of any such transaction in interstate commerce, or

[(C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof, if such orders, contracts, or dealings are executed or consummated otherwise than by or through a member of a contract market; or

[(2)] falsely to represent such person to be a member of a contract market, or the representative or agent of such member, or to be a [futures commission merchant registered] *registrant* under this Act, or the *representative or* agent of [such registered futures commission merchant] *any registrant*, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through any member of, any contract market.

[SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Commission (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission. Such person shall keep books and records of all futures transactions and positions coming within the provisions of (1) and (2) hereof, and shall keep books and records of such cash or spot transactions in such commodity entered into, and inventories and purchase and sale commitments of such commodity held, in any month in which such person is required to make any report under the provisions of (1) or (2), as the Commission may require. Such books and records shall show complete details concerning all such transactions, positions,

inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.]

SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market (1) if such person shall directly or indirectly make such contracts with respect to any commodity, or any future of such commodity, during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and (2) if such person shall directly or indirectly have or obtain a long or short position in any commodity, or any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions within the provisions of clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of, such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the United States Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

SEC. 4j. (1) The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required, make a determination, after notice and opportunity for hearing, whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted: *Provided*, That any such determination shall, at a minimum, take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

(2) The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and

subsequently when it determines that changes are required, make a determination, after notice and opportunity for hearing, whether or not a futures commission merchant may trade for its own account or any proprietary account, as defined by the Commission, and if the Commission determines that such trades shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades shall be conducted: *Provided*, That any such determination, at a minimum, shall take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission.

SEC. 4k. [(1) It shall be unlawful for any person to be associated with any futures commission merchant or with any agent of a futures commission merchant as a partner, officer, or employee (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person shall have registered, under this Act, with the Commission and such registration shall not have expired nor been suspended (and the period of suspension has not expired) or revoked, and it shall be unlawful for any futures commission merchant or any agent of a futures commission merchant to permit such a person to become or remain associated with him in any such capacity if such futures commission merchant or agent knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired) or revoked: *Provided*, That any individual who is registered as a floor broker or futures commission merchant (and such registration is not suspended or revoked) need not also register under these provisions.] *(1) It shall be unlawful for any person to be associated with a futures commission merchant or with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked, and it shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with him in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked: Provided, That any individual who is registered as a floor broker, introducing broker, or futures commission merchant (and such registration is not suspended or revoked) need not also register under these provisions.*

(2) It shall be unlawful for any person to be associated with any commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked, and it shall be unlawful for any commodity pool operator to permit such a person to become or remain associated with him in any such capacity if such commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked: Provided, That any individual who is registered as a floor broker, introducing broker, futures commission merchant, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: Provided further, That the Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

[(3) The Commission may authorize a registered futures association to perform any portion of the registration functions under this section, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission.**]**

(3) It shall be unlawful for any person to be associated with any commodity trading advisor as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked, and it shall be unlawful for any commodity trading advisor to permit such a person to become or remain associated with him in any such capacity if such commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked: Provided, That any individual who is registered as a floor broker, introducing broker, futures commission merchant, commodity trading adivsor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this provision: Provided further, That the Commission may exempt any person or class of persons from having to register under this subsection by rule, regulation, or order.

[(2)**]** *(4)* Any **[**such**]** person desiring to be registered *as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading*

advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire [two years after the effective date thereof or] at such [other] time[, not less than one year from the date of issuance thereof,] as the Commission may by rule, regulation, or order prescribe [and shall be renewed upon application therefor, unless the registration has been suspended (and the period of such suspension has not expired) or revoked after notice and hearing as prescribed in section 6(b) of this Act: *Provided*, That upon initial registration, unless the Commission otherwise prescribes by rule, regulation, or order, the effective period of such registration shall be not more than two years nor less than one year from the effective date thereof].

(5) It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known, of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

SEC. 4l. It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets.

Sec. 4m. *(1)* It shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who

provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 14 of this Act.

(2) *Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.*

SEC. 4n. (1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this Act by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(3)(A) Every commodity trading advisor and commodity pool operator registered under this Act shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commis-

sion, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

[(5) The Commission is authorized, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person is subject to an outstanding order under this Act denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

[(6) The Commission after hearing may by order deny registration, revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission finds that such denial, revocation, or suspension is in the public interest and that—

[(A) the operations of such person disrupt or tend to disrupt orderly marketing conditions, or cause or tend to cause sudden or unreasonable fluctuations or unwarranted changes in the prices of commodities;

[(B) such commodity trading advisor or commodity pool operator, or any partner, officer, director, person performing similar function or controlling person thereof—

[(i) has within ten years of the issuance of such order been convicted of any felony or misdemeanor involving the purchase or sale of any commodity or security, or arising out of any conduct or practice of such commodity trading advisor or commodity pool operator or affiliated person as a commodity trading advisor or commodity pool operator; or

[(ii) at the time of the issurance of such order, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or as an affiliated person or employee of any of the foregoing, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of commodities or securities; or

[(C) any partner, officer, or director of such commodity trading advisor or commodity pool operator, or any person performing a similar function or any controlling person thereof is subject

to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.]

SEC. 4o. (1) It shall be unlawful for any commodity trading advisor [or], *associated person of a commodity trading advisor*, commodity pool operator, *or associated person of a commodity pool operator* by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor [or], *associated person of a commodity trading advisor*, commodity pool operator, *or associated person of a commodity pool operator* registered under this Act to represent or imply in any manner whatsoever that he has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or officer thereof: *Provided*, That this section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor [or], *associated person of a commodity trading advisor*, commodity pool operator, *or associated person of a commodity pool operator* if such statement is true in fact and if the effect of such registration is not misrepresented.

SEC. 4p. The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of [futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers] *persons registered with the Commission*. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration [as futures commission merchants, flood brokers, and those persons associated with futures commission merchants or floor brokers], and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this Act or contract markets may adopt written proficiency examinations to be given to applicants for registration [as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers], and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated,

through training and experience, the degree of proficiency and skill necessary to protect the interests of [the] customers [of futures commission merchants and floor brokers] , *clients, pool participants or other members of the public with whom such individuals deal.*

SEC. 5. The Commission is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture or the Commission for the purpose: *Provided*, That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Commission.

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Commission may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Commission, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions or transactions for future delivery consummated on or subject to the rules of a board of trade, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Commission may direct, showing the details and terms of all cash and future transactions entered into by them, consummated on or subject to the rules of a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and shall at all times be open to the inspection of any representative of the Commission or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6, and the orders issued pursuant to the provisions of section 5a of this Act, and for compliance in all other respects with the requirements applicable to such board of trade under this Act.

(g) When such board of trade demonstrates that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest.

SEC. 5a. Each contract market shall—

(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) keep all books, records, minutes and journals of proceedings of such contract market, and its governing board, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed by such contract market, governing board, committees, subsidiaries and affiliates and reveal any action taken in such matters, and allow inspection at all times by any authorized representative of the Commission or United States Department of Justice of all such books, records, minutes and journals of proceedings. Such books, records, minutes and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct;

(3) require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Commission may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the Commission or United States Department of Justice;

(4) when so directed by order of the Commission, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such

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month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Commission finds that provisions for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, it shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as it finds will prevent or tend to prevent such "squeezes" and market congestion: *Provided, however*, That such order shall not apply to then existing contracts;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery at least one business day prior to such date of delivery. Whenever, after due notice and opportunity for hearing, the Commission finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, it shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as it finds will prevent or diminish unfair practices: *Provided, however*, That such order shall not apply to then existing contracts;

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated and adopted by the Commission;

(7) require that receipts issued under the United States Warehouse Act (U.S.C. 1934 ed., title 7 secs. 241–273) shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law: *Provided, however*, That such receipts shall be for the kind, quality, and quantity of commodity specified in such contract and that the warehouse in which the commodity is stored meets such reasonable requirements as may be imposed by such contract market on other warehouses as to location, accessibility, and suitability for warehousing and delivery purposes: *And provided further*, That this subsection shall apply only to futures contracts for those commodities which may be delivered from a warehouse subject to the United States Warehouse Act;

[(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relate to other trading requirements, and which have been approved by the Commission pursuant to paragraph (12) of section 5a of this Act; and revoke and not enforce any such bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing

board thereof or any committee, which has been disapproved by the Commission;]

(8) enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, which (i) have been approved by the Commission pursuant to paragraph (12) of this section, (ii) have become effective under such paragraph, or (iii) must be enforced pursuant to any Commission rule, regulation, or order; and revoke and not enforce any bylaw, rule, regulation, or resolution, made, issued, or proposed by it or by the governing board thereof or any committee, which has been disapproved by the Commission;

(9) enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market, and which have been approved by the Commission;

(10) permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives: *Provided*, That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open: *And provided further*, That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points;

(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary [, (ii) the procedure shall not be applicable to any claim in excess of $15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties], and [(iv)] *(ii)* the term "customer" as used in this [subsection] *paragraph* shall not include [a futures

commission merchant or a floor broker] *another member of the contract market*; and

[(12) except as otherwise provided in this subsection, submit to the Commission for its aproval all bylaws, rules, regulations, and resolutions made or issued by such contract market, or by the governing board thereof or any committee thereof which relate to terms and conditions in contracts of sale to be executed on or subject to the rule of such contract market or relate to other trading requireemnts except those relating to the setting of levels of margin. At least thirty days before approving any such bylaws, rules, regulations, and resolutions of major economic significance, as determined by the Commission, the Commission shall publish in the Federal Register such bylaws, rules, regulations, and resolutions. The Commission shall give interested persons an opportuniy to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commisison whether any such bylaws, rules, regulations, or resolutions are of major economic significance shall be final and not subject to judicial review. The Commission shall approve, within thirty days of their receipt (or within sixty days of their receipt if the Commission determines them to be of major economic significance) unless the Commission notifies the contract market of its inability to make such determination within such period of time, such bylaws, rules, regulations, and resolutions upon a determination that such bylaws, rules, regulations, and resolutions are not in violation of the provisions of this Act or the regulations of the Commission and thereafter the Commission shall disapprove, after appropriate notice and opportunity for hearing, any bylaw, rule, regulation, or resolution which the Commission finds at any time is in violation of the provisions of this Act or the regulations of the Commission. The Commission shall specify the terms and conditions under which a contract market may, in an emergency, as defined by the Commission, adopt a temporary rule dealing with trading requirements without prior Commission approval. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may place into immediate effect without prior Commission approval a temporary rule dealing with such emergency if it notifies the Commission of such action with a complete explanation of the emergency involved. The Commission may adopt a regulation exempting enumerated types of contract market operational and administrative rules from the requirement that they be submitted to the Commission for its approval.]

(*12*) *except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions* ("*rules*") *made or issued by such contract market, or by the governing board thereof or any committee thereof, which relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all*

other rules (except those relating to the setting of levels of margin) and may put such rules into effect ten days after receipt by the Commission of such submission, unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish in the Federal Register a notice of such rules. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific section or sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred-eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be put into effect by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph. The Commission shall specify the terms and conditions under which a contract market may, in an emergency as defined by the Commission, put a rule into effect on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under this paragraph, or during any period of review by the Commission. In the event of such an emergency, as defined by the Commission, requiring immediate action, the contract market by a two-thirds vote of its governing board may immediately put such a temporary rule into effect dealing with such emergency if the contract market notifies the Commission of such action with a complete explanation of the emergency involved.

SEC. 5b. The failure or refusal of any board of trade to comply with any of the provisions of the Act, or any of the rules, regulations

or orders of the Commission thereunder, shall be caused for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements. *The Commission shall approve or deny an application for designation as a contract market within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period shall be stayed from the time of such notification until the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial.* In the event of a refusal to designate as a "contract market" any board of trade that has made application therefor, such board of trade shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in paragraph (a) of this section.

(a) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 5 of this Act or that such board of trade, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such board of trade appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the board

of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(b) If the Commission has reason to believe that any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to such person, until further notice of the Commission, and to show cause why the registration of such person, if registered [as futures commission merchant or any person associated therewith as described in section 4k of this Act, commodity trading advisor, commodity pool operator, or as floor broker] *with the Commission in any capacity* hereunder, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission, or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act and for the purpose of any investigation or proceeding under this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing. In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of

the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may prohibit such person from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered [as futures commission merchant or any person associated therewith as described in section 4k of this Act, commodity trading advisor, commodity pool operator, or as floor broker] *with the Commission in any capacity* hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person, and may assess such person a civil penalty of not more than $100,000 for each such violation. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, *or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located*, a written petition, within fifteen days after the notice of such order is given to the offending person, praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(c) If any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in paragraph (b) of this section, make and enter an order directing that such person shall cease and desist therefrom, and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of misdemeanor and, upon conviction thereof, shall be fined not more than $100,000, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph 9(a) or 9(b): *Provided*, That any such cease and desist order against any respondent in any case of manipu-

lation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under section 6(b) of this Act. Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.

(d) In determining the amount of the money penalty assessed under paragraph (b) of this section, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market—the appropriateness of such penalty to the size of the business of the person charged, the extent of such person's ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market—the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however*, That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such Commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said Commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative

association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

SEC. 6b. If any contract market is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 5 of this Act, or if any contract market, or any director, officer, agent, or employee of any contract market otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such contract market, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than $100,000 for each such violation. If such contract market, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such contract market, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending contract market or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the appropriateness of such penalty to the net worth of the offending person and the gravity of the offense, and in the case of a contract market shall further consider whether the amount of the penalty will materially impair the contract market's ability to carry on its operations and duties.

SEC. 6c. Whenever it shall appear to the Commission that any contract market or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this Act, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (*other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representa-*

tives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property) or injunction for violation of the provisions of this Act shall be issued ex parte by said court. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this Act or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte. Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found. In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action. Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

SEC. 6d. (1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, clearinghouse, or floor broker) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this Act or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this Act, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia, shall have jurisdiction of all suits in equity and actions at law brought under this section to enforce any liability or duty created by this Act or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this Act or of any such rule, regula-

tion, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this Act shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Commission requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Commission in the manner herein provided for an original application.

SEC. 8. (a) For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: [*Provided*, That except as otherwise specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names

of customers.] *Provided, That except as otherwise specifically authorized in this Act, the Commission may not (1) disclose any records containing or based on (i) confidential information, or (ii) proprietary information that would not customarily be disclosed to the public by the persons from whom it was obtained, except that the Commission may disclose such confidential or proprietary information if disclosure is necessary to obtain public comment, or (2) publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers or data and information concerning or obtained in connection with any investigation of any person.*

(b) The Commission may disclose publicly any data or information *concerning or obtained in connection with any investigation of any person or* that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, [or] in an administrative or judicial proceeding brought under this Act, *in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this Act, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under the Bankruptcy Code.*

(c) The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any board of trade or to the transactions of any person found guilty of violating the provisions of this Act or the rules, regulations, or orders of the Commission thereunder in proceedings brought under section 6 of this Act. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this Act.

(d) The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to

whom the Commission has information, and any other information in the possession of the Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency [of the Executive Branch] of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. However, any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. *Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this Act. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party.*

(f) The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

(g) The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, and

(2) fourteen days have expired from the date of such mailing of the subpoena or summons.

[(f)](*h*) The Commission shall submit to Congress a written report within one hundred and twenty days after the end of each fiscal year detailing the operations of the Commission during such fiscal year. The Commission shall include in such report such information, data, and legislative recommendations as it deems advisable with respect to the administration of this Act and its powers and functions under this Act.

[(g)](*i*) The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

SEC. 8a. The Commission is authorized—

[(1) to register futures commission merchants and persons associated therewith as described in section 4k of this Act, commodity trading advisors, commodity pool operators, and floor brokers upon application in accordance with rules and regulations and in form and manner to be prescribed by the Commission, which may require the applicant, and any persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing; and]

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, and floor brokers upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof. Notwithstanding any other provision of this Act, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the terms of any such temporary license shall not exceed six months from the date of its issuance; and

[(2) to refuse to register any person—

[(A) if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked;

[(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant, or, if the applicant is a partnership, any general partner, or, if the applicant is a corporation, any officer or holder of

more than 10 per centum of the stock, at any time engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown; or

[(C) in the case of an applicant for registration as futures commission merchant, if it is found after opportunity for hearing that the applicant has not established that he meets the minimum financial requirements under section 4f of this Act: *Provided*, That pending final determination under clause (B) or (C), registration shall not be granted: And *Provided further*, That the applicant may appeal from a refusal of registration under clause (B) or (C) in the manner provided in paragraph (b) of section 6 of this Act; and]

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, to suspend, or to place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing; or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, or concerning activity subject to Commission regulation under section 4c or 19 of this Act or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony which (i) involves any transactions or advice concerning any contract of sale of a com-

modity for future delivery, or any activity subject to Commission regulation under section 4c or 19 of this Act, or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343, or chapter 25, 47, 95, or 96 of title 18, United States Code;

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(F) if such person is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, denying, suspending, or revoking such person's membership in any contract market or registered futures association, or barring or suspending such person from being associated with a registrant under this Act or with a member of a contract market or with a member of a registered futures association;

(G) if, as to any of the matters set forth in subparagraphs (A) through (F) of this paragraph, such person willfully made any material false or misleading statement or omitted to state any material fact in such person's application; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph: Provided, That for the purposes of paragraphs (2) and (3) of

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this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission:

Provided, that such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in paragraph (b) of this Act; and

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated or has consented to findings of a violation of any provision of this Act, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any such provision;

(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board; or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act, or any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: Provided, That no person shall be deemed to have failed reasonably to supervise another person within the meaning of this paragraph if (i) there have been established procedures and a system for applying such procedures which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such

procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

(D) such person was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section within ten years preceding the filing of the application or at any time thereafter, or was convicted of a felony, including a felony of the type specified in paragraph (2)(D) of this section, more than ten years preceding the filing of the application;

(E) such person was convicted within ten years preceding the filing of any application for registration or at any time thereafter of any misdemeanor which (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 4c or 19 of this Act or concerning a security; or (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities leader, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing; or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling; or (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, United States Code;

(F) such person was debarred by any agency of the United States from contracting with the United States;

(G) such person willfully made any material false or misleading statement or willfully omitted to state any material fact in such person's application or in any report required to be filed with the Commission by this Act or the regulations thereunder, or in any proceeding before the Commission;

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this Act or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, or any other self-regulatory organization, or barring or suspending such person from being associated with any member or mem-

bers of such contract market, association, or self-regulatory organization;

(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfu"., aided, abetted, counseled, commanded, induced, or procurea such violation by any other person;

(L) such person has associated with such person any other person and knows, or in the exercise of reasonable care should know, of facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

(M) there is other good cause; or

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration: Provided, That pending final determination under this paragraph, registration shall not be granted: Provided further, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to the provisions of this paragraph in the manner provided in paragraph (b) of section 6 of this Act; and

[(4) to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof; and]

[(3)](*4*) in accordance with the procedure provided for in paragraph (b) of section 6 of this Act, to suspend [or], revoke , *or place restrictions upon* the registration of any person registered under this Act if cause exists under [subparagraph (2) (B) or (C)] *paragraph (3) of this section* which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant *or of any introducing broker* who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Commission under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired *: Provided, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in paragraph (b) of section 6 of this Act* ; and

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act;

(6) to communicate to the proper committee or officer of any contract market, *registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934*, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers [and], consumers *or investors or which is necessary or appropriate to effectuate the purposes of this Act: Provided, That any information furnished by the Commission under this paragraph shall not be disclosed by such contract market, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding; and*

(7) to alter or supplement the rules of a contract market insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a contract market that such contract market effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such contract market has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such contract market, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such contract market. Such rules, regulations, or orders may specify changes with respect to such matters as:

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such contract market;

(B) the form or manner of execution of purchases and sales for future delivery;

(C) other trading requirements, excepting the setting of levels of margin;

(D) safeguards with respect to the financial responsibility of members;

(E) the manner, method, and place of soliciting business, including the content of such solicitations; and

(F) the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts; and

(8) to make and promulgate such rules and regulations with respect to those persons registered under this Act, who are not members of a contract market, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation; and

[(9) to direct the contract market whenever it has reason to believe that an emergency exists, to take such action as, in the Commission's judgment, is necessary to maintain or restore orderly trading in, or liquidation of, any futures contract. The term "emergency" as used herein shall mean, in addition to threatened

or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity: *Provided*, That nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions.]

(9) to direct the contract market whenever it has reason to believe that an emergency exists to take such action, including the setting of temporary emergency levels of margin, as, in the Commission's judgment, is necessary to maintain or restore orderly trading in, or liquidation of, any futures contract. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States court of appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all of the information before the Commission at the time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after notice and hearing before a panel of the court, that the action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a contract market to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions; and

(10) to authorize any person to perform any portion of the registration functions under this Act, in accordance with rules approved by the Commission, and subject to the provisions of this Act applicable to registrations granted by the Commission.

SEC. 8b. It shall be unlawful for any person, against whom there is outstanding any order of the Commission prohibiting him from trading on or subject to the rules of any contract market, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any contract market.

SEC. 8c. (1) (A) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(B) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commis-

sion prescribes. An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission.

(2) The Commision may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commision may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(3) The Commision may affirm, modify, set aside, or remand any exchange decision it reviews pursuant to subsection (2), after a determination on the record whether the action of the exchange was in accordance with the policies of this Act. Subject to judicial review, any order of the Commission entered pursuant to subsection (2) shall govern the exchange, in its further treatment of the matter.

(4) The Commission, in its discretion, may order a stay of any action taken pursuant to subsection (1) pending review thereof.

SEC. 9. (a) It shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any [futures commission merchant] *person registered or required to be registered under this Act*, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of $100, which was received [by such commission merchant] *by such person or any employee or agent thereof* to margin, guarantee, or secure the trades or contracts of any customer [of such commission merchant] or accruing to such customer as the result of such trades or contracts *or which otherwise was received from any customer, client, or pool participant in connection with the business of such person.* Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than $100,000, together with the costs of prosecution. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(b) It shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity, or knowingly to deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, section 4c(b) through section 4c(e), section 4h, section 4o(1), or section 19 of this Act, or knowingly to make any false or misleading statement of a material fact in any registra-

tion application or report filed with the Commission, or knowingly to omit in any application or report any material fact that is required to be stated therein. Notwithstanding the foregoing, in the case of any violation described in the foregoing sentence by a person who is an individual, the fine shall not be more than $100,000, together with the costs of prosecution.

(c) Except as provided in subsections (a), (b), (d), and (e) of this section, it shall be a misdemeanor punishable by a fine of not more than $100,000 or imprisonment for not more than one year, or both, together with the costs of prosecution, for any person to violate any provisions of, section 4a, section 4c(a), section 4d, section 4e, section 4i, section 4k, section 4m, section 4o(2), or section 8b, or to fail to evidence any contract mentioned in section 4 of this Act by a record in writing as therein required.

(d) It shall be a felony punishable by a fine of not more than $100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", *or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract*, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity: *Provided*, That such prohibition against any investment transaction in an actual commodity shall not apply to a transaction in which such person buys an agricultural commodity or livestock for use in his own farming or ranching operations or sells an agricultural commodity which he has produced in connection with his own farming or ranching operations nor to any transaction in which he sells livestock which he has owned at least three months, *nor to any transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person: Provided further, That such prohibition against any investment transaction in an actual commodity shall not apply to a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or similar financial instrument if no nonpublic information is used by such person in such transaction.* With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Com-

mission shall prescribe and the Commission shall make such information available to the public.

(e) It shall be a felony punishable by a fine of not more than $100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", *or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract*; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", *or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.*

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provisions to other persons and circumstances shall not be affected thereby.

SEC. 11. [Omitted as obsolete.]

SEC. 12. (a) The Commission may cooperate with any department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, or any person.

(b) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Commission may employ experts and consultants in accordance with section 3109 of title 5 of the United States Code, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of title 5 of the United States Code. The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectu-

ate the purposes and provisions of this Act, including, but not limited to, the rental of necessary space at the seat of Government and elsewhere.

(c) All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(d) There are hereby authorized to be appropriated to carry out the provisions of this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, [1982] *1984*.

(e) Nothing in this Act shall supersede or preempt: (1) criminal prosecution under any Federal criminal statute; (2) any Federal or State statute, including any rule or regulation thereunder, that is applicable to any transaction in or involving any commodity, product, right, service, or interest which is not conducted on or subject to the rules of a contract market or (except as otherwise specified by the Commission by rule or regulation) any board of trade, exchange or market located outside the United States, its territories or possession, or which is not subject to regulation by the Commission under section 4c or 19 of this Act; (3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation. The Commission is authorized to refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action, or proceedings as the department or agency shall deem appropriate.

SEC. 13. (a) Any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this Act, or any of the rules, regulations or orders issued pursuant to this Act, or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this Act or any of such rules, regulations, or orders may be held responsible [in administrative proceedings under this Act] for such violation as a principal.

(b) Any person who, directly or indirectly, controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant thereto may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person if the controlling person did not act in good faith and directly or indirectly induced the act or acts constituting the violation. In proving a violation of this subsection, the Commission shall bear the burden of showing that the controlling person did not act in good faith and directly or indirectly induced the act or acts constituting the violation.

[(b)] *(c)* Nothing in this Act shall be construed as requiring the Commission to report minor violations of this Act for prosecution, whenever it appears that the public interest does not require such action.

SEC. 14. (a) Any person complaining of any violation of any provision of this Act or any rule, regulation, or order thereunder by any

person who is registered [or required to be registered under section 4d, 4e, 4k, or 4m of] *under* this Act may, at any time within two years after the cause of action accrues, apply to the Commission [by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Commission, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Commission to the respondent, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Commission] *for an order awarding actual damages proximately caused by such violation.*

[(b) If there appear to be, in the opinion of the Commission, any reasonable grounds for investigating any complaint made under this section, the Commission shall investigate such complaint and may, if in its opinion the facts warrant such action, have said complaint served by registered mail or by certified mail or otherwise on the respondent and afford such person an opportunity for a hearing thereon before an Administrative Law Judge designated by the Commission in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of $5,000, a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied in the form of depositions and verified statements of fact.]

(b) The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders; the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

[(c) After opportunity for hearing on complaints where the damages claimed exceed the sum of $5,000 has been provided or waived and on complaints where damages do not exceed the sum of $5,000 not requiring hearing as provided herein, the Commission shall determine whether or not the respondent has violated any provision of this Act or any rule, regulation, or order thereunder.]

[(d)] *(c)* In a case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: *Provided*, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

[(f)] *(d)* If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such

order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principle place of business of the respondent, for enforcement of such reparation award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioners shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection [(g)](e) of this section, an order of the Commission awarding reparations shall be final and conclusive.

[(e) If after a hearing on a complaint made by any person under subsection (a) of this section, or without hearing as provided in subsections (b) and (c) of this section, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Commission determines that the respondent has violated any provision of this Act, or any rule, regulation, or order thereunder, the Commission shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Commission under such rules and regulations as it shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Commission with respect to the undisputed sum.]

[(g)] (e) Any order of the Commission entered hereunder shall be reviewable on petition of any party aggrieved thereby, by the United States Court of Appeals for any circuit in which a hearing was held, or if no hearing was held, any circuit in which the appellee is located, under the procedure provided in paragraph (b) of section 6 of this Act. Such appeal shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The appellee shall not be liable for costs in said court. If the appellee pre-

appellee shal lnot be liable for costs in said court. If the appellee prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

[(h)] (*f*) [Unless the registrant against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order, he shall be prohibited from trading on all contract markets and is registration shall be suspended automatically at the expiration of such fifteen-day period until he shows to the satisfaction of the Commission that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.] *Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed setlement thereof) has been made, such party shall be prohibited automatically from trading on all contract markets and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: Provided, That if on appeal the appellee prevails or if the appeal is dismissed the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.*

[(i)](*g*) The provisions of this section shall not become effective until fifteen months after the date of its enactment: *Provided*, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such fifteen month period.

SEC. 15. The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation, or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

SEC. 16. (a) The Commission may conduct regular investigations of the markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and furnish reports of the findings of these investigations to the public on a regular basis. These market re-

ports shall, where appropriate, include information on the supply, demand, prices, and other conditions in the United States and other countries with respect to such goods, articles, services, rights, interests, and information respecting the futures markets.

(b) The Commission shall cooperate with the Department of Agriculture and any other Department or Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.

(c) The Department of Agriculture and any other Department or Federal agency which has market information sought by the Commission shall furnish it to the Commission upon the request of any authorized employee of the Commission. The Commission shall abide by any rules of confidentiality applying to such information.

(d) The Commission shall not disclose in such reports data and information which would separately disclose the business transactions *or market positions* of any person and trade secrets or names of customers except as provided in section 8 of this Act.

SEC. 17. (a) Any association of persons may be registered with the Commission as registered futures association pursuant to subsection (b) of this section, under the terms and conditions hereinafter provided in this section, by filing with the Commission for review and approval a registration statement in such form as the Commission may prescribe, setting forth the information, and accompanied by the documents, below specified:

(1) Data as to its organization, membership, and rules of procedure, and such other information as the Commission may by rules and regulations require as necessary or appropriate in the public interest; and

(2) Copies of its constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its bylaws, and of any rules or instruments corresponding to the foregoing, whatever the name, hereinafter in this section collectively referred to as the "rules of the association".

(b) An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that—

(1) such association is in the public interest and that it will be able to comply with the provisions of this section and the rules and regulations thereunder and to carry out the purposes of this section;

(2) the rules of the association provide that any person registered under this Act, contract market, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this paragraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the

Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated with in the meaning of "associated person" as set forth in section 4k of this Act, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a contract market or has been and is barred or suspended from being associated with all members of such contract market, for violation of any rule of such contract market;

(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall be admitted to or continued in membership in such association, if such person—

(A) has been and is suspended or expelled from a registered futures association or from a contract market or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such contract market, for violation of any rule of such association or contract market which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade; or

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to section 6(b) of this Act, or expelling or suspending him from membership in a registered futures association or a contract market, or barring or suspending him from being associated with a futures commission merchant; or

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such contract market or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph.

(4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall become a member and no natural person shall become a person associated with a member, unless such person is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications of such person as the association finds necessary or

desirable, and in the case of a member, the financial responsibility of such a member. For the purpose of defining such standards and the application thereof, such rules may—

(A) appropriately classify prospective members (taking into account relevant matters, including type or nature of business done) and persons proposed to be associated with members.

(B) specify that all or any portion of such standard shall be applicable to any such class.

(C) require persons in any such class to pass examinations prescribed in accordance with such rules.

(D) provide that persons in any such class other than prospective members and partners, officers and supervisory employees (which latter term may be defined by such rules and as so defined shall include branch managers of members) of members, may be qualified solely on the basis of compliance with specified standards of training and such other qualifications as the association finds appropriate.

(E) provide that applications to become a member or a person associated with a member shall set forth such facts as the association may prescribe as to the training, experience, and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the applicant and that the association shall adopt procedures for verification of qualifications of the applicant, *which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such association may receive from the Attorney General all the results of such identification and processing.*

(F) require any class of persons associated with a member to be registered with the association in accordance with procedures specified by such rules (and any application or document supplemental thereto required by such rules of a person seeking to be registered with such association shall, for the purposes of subsection (b) of section 6 of the Act, be deemed an application required to be filed under this section).

(5) the rules of the association assure a fair representation of its members in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs.

(6) the rules of the association provide for the equitable allocation of dues among its members, to defray reasonable expenses of administration.

(7) the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, in general, to protect the public interest, and to remove impediments to and perfect the mechanism of free and open futures trading.

(8) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended

or barred from being associated with all members, or any other fitting penalty, for any violation of its rules.

(9) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any person seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of, and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include—

(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted.

(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation.

(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade.

(D) a statement setting forth the penalty imposed. In any proceeding to determine whether a person shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are under consideration; that a record shall be kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based.

(10) the rules of the association provide for a fair and equitable procedure through arbitration or otherwise for the settlement of [a customer's] *customers'* claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary [, (ii) the procedure shall not be applicable to any claim in excess of $15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties], and [(iv)] *(ii)* the term "customer" as used in this subsection shall not include [a futures commission merchant or a floor broker] *another member of the association.*

(c) The Commission may, after notice and opportunity for hearing, suspend the registration of any futures association if it finds that the rules thereof do not conform to the requirements of the Commission, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements.

(d) In addition to the fees and charges authorized by section 8a(4) of this Act, each person registered under this Act, who is not a member of a futures association registered pursuant to this section, shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be

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performed by the Commission because such person is not a member of a registered futures association. The Commission shall establish such additional fees and charges by rules and regulations.

(e) Any person registered under this Act, who is not a member of a futures association registered pursuant to this section, in addition to the other requirements and obligations of this Act and the regulations thereunder shall be subject to such other rules and regulations as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade.

(f) Upon filing of an application for registration pursuant to subsection (a), the Commission may by order grant such registration if the requirements of this section are satisfied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration.

(g) A registered futures association may, upon such reasonable notice as the Commission may deem necessary in the public interest, withdraw from registration by filing with the Commission a written notice of withdrawal in such form as the Commission may by rules and regulations prescribe.

(h) If any registered futures association takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any person seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection [(k)](*i*) of this section unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments).

(i) (1) In a proceeding to review disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commisssion shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commis-

sion determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

(3) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant to membership therein, or to permit such person to be associated with a member.

(j) Every registered futures association shall file with the Commission in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. [Any change in or addition to the rules of a registered futures association shall be submitted to the Commission for approval and shall take effect upon the thirtieth day after such approval by the Commission, or upon such earlier date as the Commission may determine, unless the Commission shall enter an order disapproving such change or addition; and the Commission shall enter such an order unless such change or addition appears to the Commission to be consistent with the requirements of this section and the provisions of this Act.] *A registered futures association shall submit to the Commission any change in or addition to its rules and may put such rules into effect ten days after receipt by the Commission of such submission, unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested hereunder or within thirty days after the Commission determines to review for approval any other rules, unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any*

such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of the provisions of the Act or the regulations of the Commission.

(k)(1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice and opportunity for hearing, it appears to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or effectuate the purposes of this title.

(2) The Commission may in writing request any registered futures association to adopt any specified alteration or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or to effectuate the purposes of this section, with respect to—

(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member or the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof;

(B) the method for adoption of any change in or addition to the rules of the association;

(C) the method of choosing officers and directors.

(l) The Commission is authorized, if such action appears to it to be necessary or appropriate in the public interest or to carry out the purposes of this section—

(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a registered futures association, if the Commission finds that such association has violated any provisions of this Act or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this Act;

(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a registered futures association any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person—

(A) has violated any provision of this Act or any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of this Act or any rule or regulation thereunder; or

(B) has willfully violated any provision of the Commodity Exchange Act, as amended, or of any rule, regulation, or order thereunder, or has effected any transaction for any

other person who, he had reason to believe, was willfully violating with respect to such transaction any provision of such Act or rule, regulation, or order.

(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer or director of a registered futures association who, the Commission finds, has willfully failed to enforce the rules of the association, or has willfully abused his authority.

(m) Notwithstanding any other provision of law, the Commission may approve rules of futures associations that, directly or indirectly, require persons eligible for membership in such associations to become members of at least one such association, upon a determination by the Commission that such rules are necessary or appropriate to achieve the purposes and objectives of this Act.

(n) The Commission shall include in its annual reports to Congress information concerning any futures associations registered pursuant to this section and the effectiveness of such associations in regulating the practices of the members.

SEC. 18. (a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this Act.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

SEC. 19. (a) No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(b) No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, under a standardized contract described in subsection (a) of this section, contrary to any rule, regulation, or order of the Commission designed to ensure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing.

(c) The Commission may prohibit or regulate any transactions, under a standardized contract described in subsection (a) of this section, involving any other commodities under such terms and conditions as the Commission shall initially prescribe by October 1, 1979: *Pro-*

vided, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *Provided further*, That the Commission may set different terms and conditions for such transactions involving different commodities.

(d) If the Commission determines that any transaction under subsection (b) or (c) of this section is a contract for future delivery within the meaning of this Act, such transaction shall be regulated in accordance with the applicable provisions of this Act.

SEC. 19. (a) Notwithstanding title 11 of the United States Code, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation—

(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;

(2) that certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;

(3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter;

(4) any persons to which customer property and commodity contracts may be transferred under section 766 of title 11 of the United States Code; and

(5) how the net equity of a customer is to be determined.

(b) As used in this section, the terms 'commodity broker", "commodity contract", "customer", 'customer property", "member property", "net equity", and "security" have the meanings assigned such terms for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.

SEC. 21. The Commission shall establish a joint working group with the Federal Reserve Board, Department of the Treasury, and Securities and Exchange Commission to analyze the various aspects of the events in the silver cash and futures markets during the period of September 1979 through March 1980. The joint working group will prepare a report of its findings that shall include, but not be limited to, a description of the causes of this situation, an appraisal of the adequacy of consultation during this period between the members of the joint working group, and recommendations for legislative changes that could prevent a recurrence of these or similar events in any futures market. The joint working group shall submit its report to the appropriate committees of Congress by October 1, 1980.

APPENDIXES

APPENDIX A

Names and Addresses of Commodity Exchanges Designated as Contract Markets

Chicago Board of Trade, 141 West Jackson Boulevard, Chicago, Illinois 60604.

Chicago Mercantile Exchange, 444 West Jackson Boulevard, Chicago, Illinois 60606.

Commodity Exchange, Inc., Four World Trade Center, New York, New York 10048.

Kansas City Board of Trade, 4800 Main Street, Suite 274, Kansas City, Missouri 64112.

MidAmerica Commodity Exchange, 175 West Jackson Boulevard, Chicago, Illinois 60604.

Minneapolis Grain Exchange, 150 Grain Exchange Building, Minneapolis, Minnesota 55415.

New Orleans Commodity Exchange, 308 Board of Trade Place, New Orleans, Louisiana 70130.

New York Coffee, Sugar & Cocoa Exchange, Inc., Four World Trade Center, New York, New York 10048.

New York Cotton Exchange, Four World Trade Center, New York, New York 10048.

New York Futures Exchange, Inc., 20 Broad Street, New York, New York 10005.

New York Mercantile Exchange, Four World Trade Center, New York, New York 10048.

APPENDIX B

COMMODITIES FOR WHICH MARKETS WERE DESIGNATED TO TRADE AS OF MAR. 31, 1332

Exchange	Commodity	Effective date of designation
Chicago Board of Trade	Corn	May 3, 1323.
	Oats	Do.
	Soybeans	Dec. 8, 1940.
	Soybean meal	Aug. 22, 1951.
	Soybean oil	June 30, 1950.
	Wheat	May 3, 1923.
	Gold (3-kilo and 100 oz)	July 18, 1975 (amd. Feb. 6, 1979).
	Iced broilers	July 18, 1975.
	Plywood (western)	Do.
	Silver (5,000 oz and 1,000 oz)	July 18, 1975 (amd. Mar. 5, 1981).
	Stud lumber	July 18, 1975.
	GNMA mortgages	Sept. 11, 1975.
	Commercial paper (90-day)	July 12, 1977.
	Long term T-Bonds (15-yr)	Aug. 2, 1977.
	GNMA mortgages—CD	Sept. 11, 1978.
	Commercial paper (30-day)	Do.
	T-notes (4 to 6 yr)	June 21, 1979.
	Domestic CD's (3-mo)	July 21, 1981.
	Long-term T-notes (6½ to 10-yr)	Sept. 23, 1981.
	Short-term T-notes (2½ to 2½-mo)	Sept. 30, 1981.
	Sunflower seeds	Nov. 24, 1981.
	Eurodollar time deposit rates (3-mo)	Dec. 15, 1981.
Chicago Mercantile Exchange	Butter	Sept. 13, 1936.
	Live cattle	June 18, 1968.
	Feeder cattle	Do.
	Eggs	Sept. 13, 1936.
	Frozen pork bellies	June 18, 1968.
	Frozen boneless beef	Mar. 13, 1970.
	Skinned hams	July 19, 1968.
	Grain sorghums	Jan. 27, 1971.
	Russett Burbank potatoes	Sept. 13, 1936.
	Live hogs	June 18, 1968.
	Lumber (random length)	July 18, 1975.
	Turkeys	Do.
	Canadian dollars	Do.
	Copper	Do.
	Deutsche marks	Do.
	Dutch guilders	Do.
	French francs	Do.
	Gold	Do.
	Japanese yen	Do.
	Mexican pesos	Do.
	Pounds sterling	Do.
	Swiss francs	Do.
	U.S. silver coins	Do.
	T-bills (90-day)	Nov. 26, 1975.
	Platinum	July 19, 1977.
	Stud lumber	Oct. 4, 1977.
	T-bills (1-yr)	Aug. 25, 1978.
	T-notes (4-yr)	June 19, 1979.
	Fresh broiler chickens	Sept. 25, 1979.
	Plywood	June 30, 1981.
	Domestic CD's (3-mo)	July 28, 1981.
	Italian lira	Sept. 20, 1981.
	Eurodollar time deposit rates (3-mo)	Dec. 8, 1981.
Commodity Exchange, Inc	Copper	July 18, 1975.
	Gold	Do.
	Silver	Do.
	Zinc	Oct. 4, 1977.
	T-bills (90-day)	June 21, 1979.
	GNMA	Oct. 16, 1979.
	T-notes (2-yr)	Sept. 30, 1980.
Kansas City Board of Trade	Corn	May 5, 1923.
	Grain sorghums	Do.
	Soybeans	Sept. 10, 1956.
	Wheat	May 5, 1923.
	Value Line Average Stock Index	Feb. 16, 1982.

COMMODITIES FOR WHICH MARKETS WERE DESIGNATED TO TRADE AS OF MAR. 31, 1982—Continued

Exchange	Commodity	Effective date of designation
MidAmerica Commodity Exchange	Corn	Oct. 24, 1922.
	Hogs	Sept. 14, 1973.
	Oats	Oct. 24, 1922.
	Soybeans	Dec. 8, 1940.
	Wheat	Oct. 24, 1922.
	Gold	July 18, 1975.
	Silver	Do.
	U.S. silver coins	Do.
	Live cattle	Sept. 11, 1978.
	T-bonds (long-term)	Sept. 9, 1981.
	T-bills (90-day)	Mar. 29, 1982.
Minneapolis Grain Exchange	Barley	May 2, 1923.
	Corn	Do.
	Flaxseed	Do.
	Frozen pork bellies	Mar. 19, 1971.
	Oats	May 2, 1923.
	Rye	Do.
	Soybeans	Sept. 11, 1950.
	Wheat	May 2, 1923.
	Durum wheat	Do.
	Sunflower seeds	Mar. 11, 1980.
New Orleans Commodity Exchange	Milled rice (long-grain)	Feb. 12, 1981.
	Rough rice	Apr. 8, 1981.
	Cotton	June 30, 1981.
	Soybeans	Oct. 27, 1981.
New York Coffee, Sugar and Cocoa Exchange	Cocoa (Nos. 11 and 12)	Sept. 28, 1979 (July 18, 1975).
	Coffee (B and C)	July 18, 1975.
	Sugar	Do.
New York Cotton Exchange	Cotton (Nos. 1 and 2)	Sept. 13, 1976.
Citrus Association	Frozen concentrated orange juice	July 24, 1968.
Petroleum Association	Crude oil	July 18, 1975.
	Liquid propane	Do.
Wool Association	Wool	Oct. 27, 1954.
New York Futures Exchange, Inc.	Foreign currencies:	
	British pounds	May 28, 1980.
	Canadian dollars	Do.
	Deutsche marks	Do.
	Japanese yen	Do.
	Swiss francs	Do.
	T-bills (90-day)	July 15, 1980.
	T-bonds, (20-yr)	Do.
	Bank CDs	June 30, 1981.
	GNMA-CD	Sept. 23, 1981.
	Eurodollar time deposit rates (3-mo)	Dec. 15, 1981.
New York Mercantile Exchange	Frozen boneless beef	Aug. 1, 1971.
	Round white potatoes	Dec. 1, 1941.
	Belgian francs	July 18, 1975.
	British pounds	Do.
	Canadian dollars	Do.
	Deutsche marks	Do.
	Dutch guilders	Do.
	Kilo gold	Do.
	Heating oil	Do.
	Industrial fuel oil	Do.
	Italian lira	Do.
	Japanese yen	Do.
	Mexican pesos	Do.
	Swiss francs	Do.
	Palladium	Do.
	Platinum	Do.
	Butter	Sept. 13, 1936.
	Industrial fuel oil—U.S. delivery	Aug. 25, 1978.
	Heating oil—U.S. delivery	Do.
	Gulf coast No. 2 heating oil	Aug. 4, 1981.
	New York Harbor leaded regular gasoline	Sept. 1, 1981.
	New York Harbor unleaded regular gasoline	Do.
	Gulf coast leaded regular gasoline	Oct. 27, 1981.
	Gulf coast unleaded regular gasoline	Do.

APPENDIX C

VOLUME OF COMMODITY FUTURES CONTRACTS TRADED FOR FISCAL YEARS ENDING JUNE 30, 1975, 1976, THE TRANSITION QUARTER [1] AND FISCAL YEARS ENDING SEPT. 30, 1977, 1978, 1979, 1980, 1981 [2]

VOLUME OF TRADING

[Thousand contracts]

Exchange/commodity (contract unit)	1974–75	1975–76	Transition quarter	1976–77	1977–78	1978–79	1979–80	1980–81
CHICAGO BOARD OF TRADE								
Wheat (5,000 bu)	2,115.4	2,924.2	839.3	1,884.3	2,368.0	3,032.8	5,258.5	4,649.3
Corn (5,000 bu)	4,730.3	4,733.7	1,268.5	4,661.0	6,212.0	7,833.1	10,310.2	12,283.6
Oats (5,000 bu)	177.3	129.7	46.5	107.2	171.2	237.5	275.1	337.2
Soybeans (5,000 bu)	3,913.7	4,485.5	1,490.2	7,825.3	7,903.1	9,618.7	9,354.2	12,403.1
Soybean oil (60,000 lb)	1,461.0	1,487.5	503.9	2,373.2	2,776.9	3,100.6	2,830.1	3,235.5
Soybean meal (100 tons)	840.2	1,071.3	488.1	2,193.1	2,355.0	2,823.9	2,583.8	3,457.4
Iced broilers (28,000 lb)	182.7	183.9	23.7	69.2				
Iced broilers (30,000 lb)					71.3	33.2	8.8	.4
Silver (old) (5,000 troy oz)	1,603.4	2,072.2	435.2	1,941.9	2,607.0	3,333.5	517.9	262.4
Silver (new) [3] (1,000 troy oz)								105.2
Gold (old) (3 kg)	39.9	23.9	1.3	9.2	44.9	30.2	.2	0
Gold (new) (100 oz)						79.0	73.7	30.4
Plywood (76,032 sq ft)	388.9	233.0	50.2	337.4	300.3	159.4	160.4	175.2
Western plywood [4] (76,032 sq ft)								6.4
Stud lumber (100,000 bd ft)	2.4	.7	0	0				
GNMA mortgages (CDR) [5] ($100,000)		72.2	34.9	333.4	754.2	1,197.4	2,090.9	2,392.1
GNMA mortgages (CD) ($100,000)					.8	65.8	29.7	.5
Commercial paper loan 90-day [6] ($1,000,000)				.4	12.9	41.5	20.6	2.6
Commercial paper loan 30-day ($3,000,000)						1.3	.1	0
U.S. Treasury bonds [7] ($100,000)				10.5	291.6	1,560.8	4,846.0	11,973.5
U.S. Treasury notes (4/6 yr) ($100,000)						9.6	2.4	2.8
Domestic CD (90-day) [8] ($1,000,000)								90.5
Total cost	14,585.2	17,423.8	5,188.8	21,747.1	25,875.0	33,300.3	38,433.6	57,474.1
MIDAMERICAN COMMODITY EXCHANGE (MACE)								
Wheat (1,000 bu)	526.6	499.5	141.7	194.8	191.2	296.1	526.7	359.1
Corn (1,000 bu)	928.6	540.2	155.1	313.0	264.9	292.1	365.2	618.4
Oats (5,000 bu [9])	5.6	3.6	.8	1.4	1.1	2.1	2.2	2.7
Soybeans (1,000 bu)	664.6	579.2	208.5	1,077.5	997.4	1,020.5	837.1	1,133.6
Live hogs (15,000 lb)	91.9	154.9	28.7	159.6	185.6	129.0	118.8	96.1
Live cattle (20,000 lb)					[10] 2.2	199.3	210.3	136.8
Silver (1,000 troy oz)	605.5	425.4	113.7	354.7	425.2	437.1	142.9	199.7
Gold (old) (1 kg)	4.8	3.7	.6	2.6	20.5	.3		
Gold (new) (33.2 oz)						154.1	381.7	529.6
U.S. silver coins ($5,000)	.1	([11])	0.	0.				
U.S. Treasury bonds [12] ($50,000)								10.4
Total MACE	2,827.7	2,206.5	649.1	2,103.6	2,088.1	2,530.6	2,584.9	3,086.4
KANSAS CITY BOARD OF TRADE (KCBT)								
Corn (5,000 bu)	([11])	0	0	0				
Grain sorghum [13] (280,000 lb)			.4	.2				.3
Wheat (5,000 bu)	493.3	717.8	213.4	575.0	756.8	951.9	1,201.5	1,204.2
Total KCBT	493.4	717.8	213.8	575.2	756.8	951.9	1,201.5	1,204.5

See footnotes at end of table.

APPENDIX C—Continued

VOLUME OF COMMODITY FUTURES CONTRACTS TRADED FOR FISCAL YEARS ENDING JUNE 30, 1975, 1976, THE TRANSITION QUARTER [1] AND FISCAL YEARS ENDING SEPT. 30, 1977, 1978, 1979, 1980, 1981 [2]—continued

VOLUME OF TRADING

[Thousand contracts]

Exchange/commodity (contract unit)	1974–75	1975–76	Transition quarter	1976–77	1977–78	1978–79	1979–80	1980–81
MINNEAPOLIS GRAIN EXCHANGE (MGE)								
Oats (5,000 bu)	(11)	0	0	0				
Durum wheat (5,000 bu)	.8	1.7	.1	(11)				
Durum wheat (1,000 bu)					.1			
Wheat (5,000 bu)	183.2	216.3	81.0	186.5		317.7	346.6	330.2
Wheat (1,000 bu)					1,313.9			
Sunflower seeds [14] (100,000 lb)							16.6	25.2
Total MGE	184.0	218.0	81.1	186.5	1,314.0	317.7	363.2	355.4
CHICAGO MERCANTILE EXCHANGE (CME) AND INTERNATIONAL MONETARY MARKET (IMM)								
Butter (40,000 lb)	0	(11)	(11)	0				
Fresh eggs (22,500 doz)	255.0	120.1	43.0	146.7	98.5			
Frozen eggs (36,000 lb)	(11)	0	0	0				
Nest-run eggs (22,500 doz)	.5	(11)	0	0				
Shell eggs (22,500 doz)						29.5	4.9	.3
Copper (12,500 lb)	7.6	.1	(11)	0				
Grain sorghum (400,000 lb)	1.2	.3	0	0				
Frozen skinned hams (36,000 lb)	0	0	(11)	(11)	.2			
Idaho potatoes (80,000 lb)	.6	3.5	0	4.6				
Russet potatoes (80,000 lb)						.8	2.0	1.8
Turkeys [15] (36,000 lb)				.3				
Live cattle (40,000 lb)	2,285.6	2,657.7	628.6	2,805.3	4,659.7	6,989.6	6,490.8	4,465.0
Live feeder cattle (42,000 lb)	31.9	36.6	22.7	119.3	444.2	967.3	918.3	606.8
Live hogs (30,000 lb)	1,152.7	1,542.2	219.7	1,203.4	1,694.4	1,766.4	1,940.4	2,420.3
Lumber (100,000 bd ft)	246.9	294.1	90.0	437.0	530.5	638.7	819.5	666.7
Stud lumber (100,000 bd ft)					7.5	6.0	2.6	.5
Frozen pork bellies (38,000 lb)						[1],430.1	2,056.9	2,036.6
Frozen boneless beef [16] (36,000 lb)				(11)	0			
Frozen pork bellies (36,000 lb)	1,109.9	1,325.4	280.3	1,283.9	1,440.0			
Plywood [17] (152,064 sq ft)								.3
Broilers, fresh frozen [18] (30,000 lb)							41.3	27.3
U.S. silver coins ($5,000)	102.4	3.7	.3	.3	.4	.1	0	0
Gold (100 troy oz)	175.7	383.9	81.3	571.3	2,355.9	3,832.3	2,273.1	2,952.9
British pound (50,000)	13.2	19.4	7.2	44.9	230.5			
British pound (25,000)						395.7	1,115.6	1,377.7
Canadian dollar (200,000)	3.4	3.7	2.5	130.2	141.1			
Canadian dollar (100,000)						383.2	585.6	458.6
Deutschemark (500,000)	53.9	47.4	9.1	102.8	328.4			
Deutschemark (125,000)						417.1	772.9	1,485.1
Dutch guilder (125,000)	1.1	.5	.1	.3	6.2	.1	0	0
Canadian silver coins (5,000)	(11)	0	0	0				
Japanese yen (25,000,000)	4.9	1.2	.4	28.2	330.1			
Japanese yen (12,500,000)						348.5	463.9	832.7
Mexican peso (1,000,000)	63.6	55.3	10.8	18.2	18.7	29.9	19.8	18.0
Swiss franc (500,000)	54.9	56.5	8.5	66.0	286.0			
Swiss franc (125,000)						420.6	753.7	1,219.0
French franc (250,000)	16.5	4.4	1.1	4.3	4.3	.9	.1	1.6
U.S. Treasury bills (90 day) [19] ($1,000,000)		36.5	28.8	260.8	531.7	1,604.6	3,044.0	5,072.4
U.S. Treasury bills (1 yr) [20] ($1,000,000)					2.2			
U.S. Treasury bills (1 yr) ($250,000)						14.6	1.0	0
U.S. Treasury notes (4 yr) ($100,000)						9.8	1.6	0
Domestic CD (90 day) [21] ($1,000,000)								104.5
Total CME	5,581.5	6,592.5	1,434.4	7,227.8	13,110.9	19,285.8	21,303.0	23,748.1

See footnotes at end of table.

APPENDIX C—Continued

VOLUME OF COMMODITY FUTURES CONTRACTS TRADED FOR FISCAL YEARS ENDING JUNE 30, 1975, 1976, THE TRANSITION QUARTER [1] AND FISCAL YEARS ENDING SEPT. 30, 1977, 1978, 1979, 1980, 1981 [2]—continued

VOLUME OF TRADING

[Thousand contracts]

Exchange/commodity (contract unit)	1974–75	1975–76	Transition quarter	1976–77	1977–78	1978–79	1979–80	1980–81
PACIFIC COMMODITIES EXCHANGE (PCE) [22]								
Coconut oil (60,000 lb)	6.9	3.5	EXCHANGED CLOSED					
Palm oil (60,000 lb)	1.3	1.6						
Silver (5,000 oz)	5.3	1.8						
Western live cattle (50,000 lb)	1.0	0.5						
Total PCE	14.5	7.4						
NEW YORK MERCANTILE EXCHANGE (NYME)								
Imported boneless beef (30,000 lb)	4.2	2.9	.9	2.9	4.4			
Imported lean beef (36,000 lb)						14.4	22.0	14.4
Maine potatoes [23] (50,000 lb)	664.2	819.5	37.8	93.4				
Round white potatoes [24] (50,000 lb)				355.0	495.5	268.5	278.7	356.8
Palladium (100 troy oz)	1.4	3.9	2.7	6.6	46.6	527.4	61.7	43.2
Platinum (50 troy oz)	149.3	103.4	47.4	102.0	347.7	47.3	431.3	487.0
U.S. silver coins ($10,000)	61.8	41.1	3.8	20.1	12.3	6.5	7.5	.2
Gold (old) (1 kg)	30.7	8.8	.3	1.2	.7	.3	0	0
Gold (new) [25] (400 troy oz)					4.8	1.2	0	0
Belgian franc (2,000,000)	38.9	14.0	(11)	0				
British pound (25,000)	(11)	0	0	0		.9		
Dutch guilder (125,000)	(11)	0	0	0				
Deutschemark (250,000)	(11)	0	0	0				
Deutschemark (125,000)						2.0		
Swiss franc (250,000)	(11)	(11)	(11)	0				
Swiss franc (125,000)						.5		
Japanese yen (12,500,000)	(11)	0	0	0		.5		
Canadian dollar (100,000)	(11)	0	0	0		4.0	0	0
Mexican peso (1,000,000)	(11)	0	0	0				
Industrial fuel oil (100 me. tons)	(11)	.1	0	0				
No. 6 industrial fuel oil (42,000 U.S. gal)						.1		
Heating oil (100 me. tons)	(11)	(11)	0	0				
No. 2 heating oil, NY (42,000 U.S. gal)						10.6	104.6	825.3
No. 2 heating oil gulf [26] (42,000 U.S. gal)								1.1
Total NYME	950.5	933.7	92.9	581.2	912.0	834.2	905.8	1,726.9
NEW YORK COTTON EXCHANGE & ASSOCIATES (NYCE)								
Cotton No. 2 (50,000 lb)	416.9	801.5	241.0	902.4	947.3	1,549.3	2,472.7	1,610.1
Orange juice, frozen concentrate (15,000 lb)	76.1	74.3	11.9	255.6	364.9	203.2	154.6	362.1
Wool (6,000 lb)	1.4	.7	.1	.1	0			
Propane gas (100,000 gal)	6.8	3.2	.4	.5	0	0	0	.1
Petroleum (5,000 bbl)	30.2	25.2	.5	0	0			
Total NYCE	531.4	904.9	253.9	1,158.6	1,312.2	1,752.5	2,627.3	1,972.3

See footnotes at end of table.

APPENDIX C—Continued

VOLUME OF COMMODITY FUTURES CONTRACTS TRADED FOR FISCAL YEARS ENDING JUNE 30, 1975, 1976, THE TRANSITION QUARTER [1] AND FISCAL YEARS ENDING SEPT. 30, 1977, 1978, 1979, 1980, 1981 [2]—continued

VOLUME OF TRADING

[Thousand contracts]

Exchange/commodity (contract unit)	1974–75	1975–76	Transition quarter	1976–77	1977–78	1978–79	1979–80	1980–81
COFFEE, SUGAR, AND COCOA EXCHANGE (CSCE)								
Cocoa (30,000 lb)	325.4	316.5	83.4	318.5	241.6	224.9	250.2	0
Cocoa (10 me. tons)						0	89.2	518.9
Rubber (33,000 lb)	3.0	1.7	(11)	1	0			
Sugar No. 12 (112,000 lb)	.7	3.8	5.7	19.1	18.7	28.8	25.8	11.9
Sugar No. 11 (112,000 lb)	752.0	884.4	314.7	1,037.4	953.4	1,248.3	3,566.2	2,812.2
Sugar No. 10 (domestic) (112,000 lb)	32.0	0	0	0				
Coffee "C" (37,500 lb)	76.0	119.4	38.6	221.2	162.4	335.8	942.6	484.7
Total CSCE	1,189.1	1,325.8	442.4	1,596.3	1,376.1	1,837.8	4,874.0	3,827.7
COMMODITY EXCHANGE, INC. (COMEX)								
Copper (25,000 lb.)	309.4	942.3	340.2	1,120.9	1,219.5	2,197.4	1,940.5	1,676.1
Rubber (22,040 lb.)	.3	0	0	0				
Silver (5,000 troy oz.)	1,720.6	3,214.5	766.4	3,974.2	3,655.0	4,887.7	1,260.9	1,089.1
Gold (100 troy oz.)	140.3	424.9	85.5	710.9	2,651.8	6,278.2	7,007.5	10,494.1
Mercury (10 flasks)	(11)	0	0					
Zinc (60,000 lb.)					.6	.2	0	0
U.S. Treasury bills (90 day) [28] ($1,000,000)							83.3	21.6
GNMA mortgages CD [29] ($100,000)							8.3	0
U.S. Treasury notes (2 yr) [30] ($100,000)								47.6
Total COMEX	2,170.6	4,581.7	1,191.1	5,806.0	7,526.9	13,363.5	10,300.5	13,328.5
AMEX COMMODITIES EXCHANGE, INC. (ACE) [31]								
GNMA mortgages CD [32] ($100,000)	Exchange not designated.				1.9	61.6	10.1	0
U.S. Treasury bills (90 day) [33] ($1,000,000)						3.7	.6	0
U.S. Treasury bonds [34] ($100,000)							15.2	0
Total ACE					1.9	65.3	25.9	0
NEW YORK FUTURES EXCHANGE (NYFE) [35]								
U.S. Treasury bills (90 day) [36] ($1,000,000)	Exchange not designated.						15.7	26.5
U.S. Treasury bonds [37] ($100,000)							43.4	255.5
Domestic CD (90 day) [38] ($1,000,000)								90.9
British pound [37] (25,000)							3.6	3.8
Canadian dollar [37] (100,000)							.5	.2
Deutsche mark [37] (125,000)							.1	.1
Japanese yen (12,500,000)							.1	.1
Swiss franc (125,000)							2.7	.9
Total NYFE							66.1	378.0

See footnotes at end of table.

NEW ORLEANS COMMODITY EXCHANGE (NOCE)[39]								
Rice, milled[40] (120,000 lb) --	Exchange not designated.							8.2
Rice, rough[41] (200,000 lb)----								8.5
Cotton[42] (50,000 lb)----------								4.6
Total NOCE----------								21.3
Total all contracts-----	28,527.8	34,972.1	9,548.5	40,982.3	54,273.9	74,289.6	82,690.8	107,123.2

[1] The transition quarter covers July 1 to Sept. 30, 1976, when the Federal fiscal year changed from July 1–June 30 to Oct. 1–Sept. 30.

[2] Data has been obtained from the Commodity Futures Trading Commission Annual Reports for the years 1977, 1978, 1980 and 1981. The figures for the fiscal years 1977–78, 1978–79, 1979–80, and 1980–81 are expressed in thousands of contracts.

[3] Trading began Mar. 16, 1981.
[4] Trading began Apr. 20, 1981.
[5] Trading began Oct. 20, 1975.
[6] Trading began Sept. 26, 1977.
[7] Trading began Aug. 22, 1977.
[8] Trading began July 22, 1981.
[9] Contract unit reduced from 5,000 bu to 1,000 bu effective June 10, 1981.
[10] Trading opened Sept. 28, 1978.
[11] Less than 50 contracts.
[12] Trading began Sept. 18, 1981.
[13] Trading began Sept. 1, 1976.
[14] Trading began May 6, 1980.
[15] Trading began Nov. 24, 1976.
[16] Trading began June 21, 1977.
[17] Trading began July 28, 1981.
[18] Trading began Nov. 6, 1979.
[19] Trading began Jan. 6, 1976.
[20] Trading began Sept. 11, 1978.
[21] Trading began July 29, 1981.
[22] The Pacific Commodities Exchange closed on May 10, 1976.
[23] Trading ceased in May 1977.
[24] Trading began Nov. 15, 1976.
[25] Trading began Nov. 14, 1977.
[26] Trading began Aug. 17, 1981.
[27] The New York Cocoa Exchange and the New York, Coffee and Sugar Exchange merged on Sept. 28, 1979. Prior to the merger, the New York Cocoa Exchange traded cocoa (30,000 lb) and rubber (33,000 lb) contracts.
[28] Trading began Oct. 2, 1979.
[29] Trading began Nov. 13, 1979.
[30] Trading began Dec. 2, 1980.
[31] Date of designation, Aug. 22, 1978.
[32] Trading began Sept. 12, 1978. Contract market vacated July 3, 1981.
[33] Contract designated June 19, 1979. Contract market vacated Feb. 2, 1981.
[34] Trading began Nov. 14, 1979. Contract market vacated Feb. 2, 1981.
[35] Date of designation, May 28, 1980.
[36] Trading began Aug. 14, 1980.
[37] Trading began Aug. 7, 1980.
[38] Trading began July 9, 1981.
[39] Date of designation, Feb. 12, 1981.
[40] Trading began Apr. 9, 1981.
[41] Trading began Apr. 10, 1981.
[42] Trading began July 7, 1981.

APPENDIX D

The Mechanics of Futures Trading

PLACING ORDERS

The customer contacts a solicitor or account executive who in turn transmits the order, either directly or through a central office, to the exchange trading floor. The order is received on the trading floor by the firm's phone man. After recording and time-stamping the order, he gives it to a runner who carries the order to a floor broker in the designated trading area for that commodity. These trading areas are called pits or rings and each delivery month of a commodity is generally traded in a certain area of the pit or ring. Some firms no longer telephone orders to the floor. Instead, the orders are fed through a computerized system that transmits them to the floor via teletype.

EXECUTION OF TRADES

The actual trading of futures contracts takes place in the noisy, boisterous setting of an auction-type market. The Commodity Exchange Act requires that all futures transactions be executed on a commodity exchange designated by the Commodity Futures Trading Commission as a "contract market." Both the Commodity Exchange Act and the rules and regulations of the commodity exchanges require that futures transactions be executed openly in a competitive manner. Section 1.38 of the regulations under the Commodity Exchange Act reads in part as follows:

> All purchases and sales of any commodity for future delivery on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for the trading in such commodity.

Certain carefully prescribed exceptions to competitive trading are allowed, but they do not nullify the general requirement of open and competitive trading.

The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are focused into the centralized marketplace to participate in the competitive determination of the price of futures contracts. This system also provides ready access to the market for all orders and results in a continuous flow of price information to the public.

The rules requiring competitive trading also require that all trades be executed in the area and during the hours designated by the contract market. Other exchanges can trade virtually identical contracts for the same commodity, provided they meet the requirements of a contract market as specified by the Commodity Exchange Act and are so designated by the Commission.

CLEARING TRADES

After a trade has been executed, the confirmation of the trade retraces the path of the initial order within a few minutes. Final confirmation, however, cannot be made until the trade goes through the clearinghouse. In the clearinghouse, both sides of the trade must be matched, and any differences between the buyer and seller must be referred to the clearing firms involved for reconciliation.

The clearing procedure for futures trading points out one of the major distinctions between futures and securities trading. Unlike securities, there is no certificate or documented exchanged in a futures transaction. The futures contract is embodied in the rules and regulations of the contract market.

The clearinghouse (or clearing association) performs the functions of matching all buys and sells which are executed each day and of assuring the financial integrity of all futures transactions. As trades are matched and confirmed at the end of each trading session, the clearing house takes the opposite side of every transaction. It becomes the seller of all "buys" and the buyer of all "sells." Thus, when a trade establishes a position in the market, he does so with the clearinghouse, and when he offsets his position he offsets it with the clearinghouse. The clearinghouse assumes the legal responsibility for the opposite side of every transaction made on the contract market.

The clearinghouse requires that its members deposit margins to secure their firm's futures transactions. The clearing members, in turn, require margins from their customers. If the market moves against the open contracts of a clearing firm, that firm's initial margin is impaired and additional margin will be required.

Daily payments or receipts also occur between the clearinghouse and its members to account for daily price changes. The clearinghouse maintains the open accounts of member firms at the current market prices. At the end of each day, these accounts are adjusted to the day's settlement price for each contract. Firms with net gains receive payment from the clearinghouse, while firms with net losses make payments to the clearinghouse. These receipts and payments of the clearinghouse exactly offset one another, with the clearinghouse merely transferring equity from losers to winners.

DELIVERIES

Deliveries on futures contracts are also made through the clearinghouse. A seller wishing to make delivery on a futures contract during the delivery month files a delivery notice with the clearinghouse on the day prior to the intended delivery. The clearinghouse then assigns the notice to clearing members having long positions in that particular future. Assignment of the delivery notice is generally to the clearing member having the oldest long position, although some exchanges allocate the assignments on other bases. At this point, the clearinghouse has completed its role, and the delivery must be consummated between the buyer and seller in accordance with exchange rules.

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